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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

CHRISTINE GARCIA, individually and on behalf of all other persons similarly situated,

Case No.

**Plaintiff,**

## **CLASS ACTION COMPLAINT**

V.

ALO, LLC,

**JURY TRIAL DEMANDED**

**Defendant.**

1 Plaintiff Christine Garcia (“Plaintiff”) files this class action complaint on behalf of herself  
 2 and all others similarly situated (the “Class Members”) against Defendant, Alo, LLC (“Defendant”  
 3 “Alo”). Plaintiff brings this action based upon personal knowledge of the facts pertaining to  
 4 herself, and on information and belief as to all other matters, by and through the investigation of  
 5 the undersigned counsel.

6 **NATURE OF THE ACTION**

7 1. This is a class action suit brought against Alo for breaching its customers’ trust and  
 8 allowing companies scattered around Silicon Valley to invade its customers’ privacy through two  
 9 of its websites, [alomoves.com](https://www.alomoves.com) and [aloyoga.com](https://www.aloyoga.com) (collectively the “Websites”). In particular, Alo  
 10 helped Meta Platforms, Inc. (“Meta”), Google LLC (“Google”), Microsoft Corporation  
 11 (“Microsoft”), Snap, Inc. (“Snap”), and Heap Analytics (“Heap”), (collectively the “Third  
 12 Parties”), collect and intercept customers’ communications with Alo as consumers either searched  
 13 for products on aloyoga.com by typing search terms into the search bar on the website, or answered  
 14 questions to the onboarding survey on alomoves.com.

15 2. Alo’s business focuses on fitness, wellness, mindfulness, and of course, yoga.  
 16 Through its alomoves.com website, Alo offers a subscription to fitness, yoga, and wellness courses  
 17 for a monthly fee.<sup>1</sup> Alo’s aloyoga.com website focuses on selling workout equipment, yoga  
 18 clothing, workout clothing, intimate clothing, and wellness products such as supplements.<sup>2</sup>

19 3. Consumers use Defendant’s Websites in hopes of improving their mind and body.  
 20 What consumers don’t know is that their personal improvement journey is not so personal.  
 21 Instead, Defendant has allowed the Third Parties to contemporaneously capture the electronic  
 22 communications consumers direct towards Defendant through its Websites. And all of this is done  
 23 to help Defendant with its own “personal improvement” such as to assist its marketing, advertising,  
 24 and data analytics efforts.

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 27 <sup>1</sup> ALO MOVES, <https://www.alomoves.com>.  
 28 <sup>2</sup> ALO, <https://www.aloyoga.com>.

4. The nature of the Third Parties' licensing agreements with Defendant are such that Defendant "aids, agrees with, employs, or conspires" to permit the Third Parties to read, attempt to read, to learn, and/or to use the confidential communications of Website visitors without prior consent, thus violating the California Invasion of Privacy Act ("CIPA"), Cal. Penal Code §§ 631(a) and 632.

5. Plaintiff brings this action on behalf of all California residents who conducted searches for products on aloyoga.com or answered Defendant’s onboarding survey on alomoves.com while in California, and whose electronic communications were intercepted or recorded by Meta, Google, Microsoft, Snap, and Heap. Defendant has enabled these Third Parties to intercept visitors’ communications by employing these Third Parties’ services to track users across the Website (collectively the “Tracking Tools”).

## THE PARTIES

## I. PLAINTIFF

6. Plaintiff Christine Garcia is an adult citizen of the state of California and resides in Concord, California.

7. Plaintiff Garcia created a Facebook account around 2008. In March 2024, Plaintiff Garcia visited Defendant’s alomoves.com website to register for a subscription to Defendant’s online workout classes. During the sign-up process, Plaintiff Garcia answered Defendant’s onboarding survey questions. Plaintiff Garcia’s answers to the survey questions were communications intercepted in transit by Heap—as enabled by Defendant. Neither Defendant nor Heap procured Plaintiff Garcia’s prior consent to this interception. Plaintiff Garcia did not discover and could not have discovered this violation until approximately March 2024 upon her retention of counsel.

## II. DEFENDANT

8. Defendant Alo, LLC. (“Alo”) is a California limited liability company with its principal place of business in Beverly Hills, California.

1                   **JURISDICTION AND VENUE**

2                 9.     This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A)  
 3 because this case is a class action where the aggregate claims of all members of the proposed class  
 4 are in excess of \$5,000,000, exclusive of interest and costs, and at least one member of the  
 5 proposed class is a citizen of a state different from at least one Defendant.

6                 10.    The Court has general personal jurisdiction over Defendant because Defendant is a  
 7 California limited liability company and has its principal place of business in California, meaning it  
 8 is at home in the State of California.

9                 11.    Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant  
 10 resides in this District.

11                   **FACTUAL ALLEGATIONS**

12                 **I.   OVERVIEW OF THE THIRD PARTIES' TRACKING TOOLS**

13                 12.    Defendant enables Meta, Google, Microsoft, Snap, and Heap to intercept Plaintiff's  
 14 and Class Members' communications by employing the Third Parties' Tracking Tools on its  
 15 Websites in the manner described throughout this Complaint.

16                 **A.   The Meta Pixel**

17                 13.    Facebook describes itself as a "real identity platform,"<sup>3</sup> meaning users are allowed  
 18 only one account and must share "the name they go by in everyday life."<sup>4</sup> To that end, when  
 19 creating an account, users must provide their first and last name along with their birthday and  
 20 gender.<sup>5</sup>

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 25                 <sup>3</sup> Sam Schechner and Jeff Horwitz, *How Many Users Does Facebook Have? The Company Struggles to Figure It Out*, Wall. St. J. (Oct. 21, 2021).

26                 <sup>4</sup> META, COMMUNITY STANDARDS, PART IV INTEGRITY AND AUTHENTICITY,  
 27                    [https://www.facebook.com/communitystandards/integrity\\_authenticity](https://www.facebook.com/communitystandards/integrity_authenticity).

28                 <sup>5</sup> META, SIGN UP, <https://www.facebook.com/>

1       14.     Meta owns facebook.com and generates revenue by selling advertising space on that  
 2 website, and other applications it owns, like Instagram.<sup>6</sup> In 2021, Facebook generated \$117 billion  
 3 in revenue.<sup>7</sup> Roughly 97% of that came from selling advertising space.<sup>8</sup>

4       15.     Meta sells advertising space by highlighting its ability to target users.<sup>9</sup> Meta can  
 5 target users so effectively because it surveils user activity both on and off its site.<sup>10</sup> This allows  
 6 Meta to make inferences about users beyond what they explicitly disclose, like their “interests,”  
 7 “behavior,” and “connections.”<sup>11</sup> Meta compiles this information into a generalized dataset called  
 8 “Core Audiences,” which advertisers use to apply highly specific filters and parameters for their  
 9 targeted advertisements.<sup>12</sup>

10      16.     Advertisers can also build “Custom Audiences.”<sup>13</sup> Custom Audiences enable  
 11 advertisers to reach “people who have already shown interest in [their] business, whether they’re  
 12 loyal customers or people who have used [their] app or visited [their] website.”<sup>14</sup> With Custom  
 13 Audiences, advertisers can target existing customers directly, and can also build “Lookalike  
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16      <sup>6</sup> Mike Isaac, *Facebook’s profit surges 101 percent on strong ad sales*, N.Y. TIMES (July 28, 2021),  
 17 <https://www.nytimes.com/2021/07/28/business/facebook-q2-earnings.html>.

18      <sup>7</sup> META, META REPORTS FOURTH QUARTER AND FULL YEAR 2021 RESULTS,  
 19 <https://investor.fb.com/investor-news/press-release-details/2022/Meta-Reports-Fourth-Quarter-and-Full-Year-2021-Results/default.aspx>

20      <sup>8</sup> *Id.*

21      <sup>9</sup> META, WHY ADVERTISE ON FACEBOOK INSTAGRAM AND OTHER META TECHNOLOGIES,  
 22 <https://www.facebook.com/business/help/205029060038706>.

23      <sup>10</sup> META, ABOUT META PIXEL, <https://www.facebook.com/business/help/742478679120153?id=1205376682832142>.

24      <sup>11</sup> META, AUDIENCE AD TARGETING, <https://www.facebook.com/business/ads/ad-targeting>.

25      <sup>12</sup> META, EASIER, MORE EFFECTIVE WAYS TO REACH THE RIGHT PEOPLE ON FACEBOOK,  
 26 <https://www.facebook.com/business/news/Core-Audiences>.

27      <sup>13</sup> META, ABOUT CUSTOM AUDIENCES, <https://www.facebook.com/business/help/744354708981227?id=2469097953376494>.

28      <sup>14</sup> *Supra* note 12.

1       Audiences,” which “leverage[] information such as demographics, interests, and behavior from  
 2       your source audience to find new people who share similar qualities.”<sup>15</sup>

3       17.      Unlike Core Audiences, advertisers can build Custom Audiences and Lookalike  
 4       Audiences only if they first supply Meta with the underlying data. They can do so through two  
 5       mechanisms: by manually uploading contact information for customers, or by utilizing Meta’s  
 6       “Business Tools.”<sup>16</sup>

7       18.      As Meta puts it, the Business Tools “help website owners and publishers, app  
 8       developers and business partners, including advertisers and others, integrate with Meta, understand  
 9       and measure their products and services, and better reach and serve people who might be interested  
 10       in their products and services.”<sup>17</sup>

11       19.      Put succinctly, Meta’s Business Tools are bits of code that advertisers can integrate  
 12       into their website, mobile applications, and servers, thereby enabling Meta to intercept and collect  
 13       user activity on those platforms.

14       20.      The Business Tools are automatically configured to capture certain data, like when a  
 15       user visits a webpage, that webpage’s Universal Resource Locator (“URL”) and metadata.<sup>18</sup>  
 16       However, Meta’s Business Tools can also track other events. Meta offers a menu of “standard

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21       <sup>15</sup> META, ABOUT LOOKALIKE AUDIENCES, <https://www.facebook.com/business/help/164749007013531?id=401668390442328>.

22       <sup>16</sup> META, CREATE A CUSTOMER LIST CUSTOM AUDIENCE, <https://www.facebook.com/business/help/170456843145568?id=2469097953376494>; META, CREATE A WEBSITE CUSTOM  
 23       AUDIENCE, <https://www.facebook.com/business/help/1474662202748341?id=2469097953376494>.

24       <sup>17</sup> META, THE META BUSINESS TOOLS, <https://www.facebook.com/help/331509497253087>.

25       <sup>18</sup> See META, META PIXEL, ACCURATE EVENT TRACKING, ADVANCED, <https://developers.facebook.com/docs/facebook-pixel/advanced/>; see also META, BEST PRACTICES FOR  
 26       META PIXEL SETUP, <https://www.facebook.com/business/help/218844828315224?id=1205376682832142>; META, APP EVENTS API, <https://developers.facebook.com/docs/marketing-api/app-event-api/>.

1 events” from which advertisers can choose, including what content a visitor views or purchases.<sup>19</sup>

2 Advertisers can even create their own tracking parameters by building a “custom event.”<sup>20</sup>

3       21. One such Business Tool is the Meta Tracking Pixel. Meta offers this piece of code  
 4 to advertisers, like Defendant, to integrate into their website. As the name implies, the Meta  
 5 Tracking Pixel “tracks the people and type of actions they take.”<sup>21</sup> When a user accesses a website  
 6 hosting the Meta Tracking Pixel, Meta’s software surreptitiously directs the user’s browser to  
 7 simultaneously send a separate message to Meta’s servers. This second, secret transmission  
 8 contains the original GET request sent to the host website, along with additional data the Pixel is  
 9 configured to collect. This transmission is initiated by Meta code and concurrent with the  
 10 communications with the host website. Two sets of code are thus automatically run as part of the  
 11 browser’s attempt to load a website: the website’s own code, and Meta’s embedded code.

12       22. An example illustrates the point. Take an individual who navigates to [aloyoga.com](http://aloyoga.com)  
 13 and enters search terms into the Website’s search bar. Once the individual enters in the search  
 14 terms, the individual’s browser sends a GET request to Defendant’s server requesting that server to  
 15 load the particular webpage. Because Defendant utilizes the Meta Tracking Pixel, Meta’s  
 16 embedded code, written in JavaScript, sends secret instructions back to the individual’s browser or  
 17 mobile phone, without alerting the individual that this is happening. Meta causes the browser to  
 18 secretly and simultaneously duplicate the communication with Defendant, transmitting it to Meta’s  
 19 servers alongside additional information that transcribes the communication’s content and the  
 20 individual’s identity. This entire process occurs within milliseconds.

21       23. In other words, when a user communicates with Defendant’s Website, those  
 22 communications are simultaneously and contemporaneously duplicated and sent to Meta at the  
 23 same time as they are being sent to Defendant. Thus, Meta’s interception of these communications

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24       <sup>19</sup> META, SPECIFICATIONS FOR META PIXEL STANDARD EVENTS, <https://www.facebook.com/business/help/402791146561655?id=1205376682832142>.

25       <sup>20</sup> META, ABOUT STANDARD AND CUSTOM WEBSITE EVENTS, <https://www.facebook.com/business/help/964258670337005?id=1205376682832142>; *see also* META, APP EVENTS API, <https://developers.facebook.com/docs/marketing-api/app-event-api/>.

26       <sup>21</sup> META, RETARGETING, <https://www.facebook.com/business/goals/retargeting>.

1 occurs “in transit.” *See, e.g., In re Facebook Internet Tracking Litigation.*, 956 F.3d 589, 608 (9th  
 2 Cir. 2020) (“Permitting an entity to engage in the unauthorized duplication and forwarding of  
 3 unknowing users’ information would render permissible the most common methods of  
 4 intrusion...”); *Revitch v. New Moosejaw, LLC*, 2019 WL 5485330, at \*2 (N.D. Cal. Oct. 23, 2019)  
 5 (“Even if the browser caused a parallel signal to be sent to NaviStone, that intervention happened  
 6 while the signal was already in transit from Revitch’s device. Section 631’s protections extend  
 7 explicitly to the beginnings and ends of communications...”); *James v. Walt Disney Co.*,  
 8 --- F. Supp. 3d ---, 2023 WL 7392285, at \*15-16 (N.D. Cal. Nov. 8, 2023) (finding in-transit  
 9 interception was alleged based on a similar process to the one alleged herein).

10       24. After collecting and intercepting this information, Meta processes it, analyzes it, and  
 11 assimilates it into datasets like Core Audiences and Custom Audiences. In order to engage in the  
 12 above-described processing, analysis and assimilation, on information and belief, Meta has to view  
 13 the information being processed, analyzed and assimilated. As such, upon information and belief,  
 14 Meta regularly viewed and used Plaintiff and Class Members’ communications that it intercepted  
 15 via the Meta Pixel.

16       25. Meta’s other Business Tools function the same. For mobile applications, advertisers  
 17 can utilize the Meta SDK, which contains “component SDKs,” like the App Events API, allowing  
 18 advertisers to track events on their mobile apps so they can “measure ad performance and build  
 19 audiences for ad targeting.”<sup>22</sup>

20       26. Advertisers can also utilize the “Conversions API.” The Conversions API lets  
 21 advertisers circumvent a user’s choice to exercise privacy controls.<sup>23</sup> More technically, the  
 22 Conversions API is Meta code that advertisers can implement server-side.<sup>24</sup>

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 26 <sup>22</sup> META, APP EVENTS API, <https://developers.facebook.com/docs/marketing-api/app-event-api/>.  
 27 <sup>23</sup> META, CONVERSIONS API, <https://developers.facebook.com/docs/marketing-api/conversions-api>. This refers to device specific privacy controls.

28 <sup>24</sup> *Id.*

1       27. Because it operates server-side, the Conversions API ignores users' decision to opt  
 2 out of tracking, collecting the same data it would otherwise through "a connection between an  
 3 advertiser's server and Meta's Conversion API endpoint."<sup>25</sup>

4       28. When the Conversions API collects "[s]erver events," those data points are "linked  
 5 to a Meta Pixel ID and are processed like web events sent via Pixel."<sup>26</sup> As with the Meta Tracking  
 6 Pixel, the Conversions API intercepts these communications contemporaneously and  
 7 surreptitiously.<sup>27</sup> Meta "recommend[s] that advertisers implement the Conversions API alongside  
 8 their Meta Pixel and follow other best practices."<sup>28</sup>

9       29. Meta confirms, in its "Meta Business Tools Terms,"<sup>29</sup> that it has the capability to  
 10 use information it collects for purposes other than recording it and conveying it to Defendant. For  
 11 instance, Meta can use the information it collects "to promote safety and security on and off the  
 12 Meta Products, for research and development purposes and to maintain the integrity of and to  
 13 provide and improve the Meta Products."<sup>30</sup> In other words, Meta can use the wiretapped  
 14 information for its own "research and development," and to "protect" its own products and  
 15 services.<sup>31</sup>

16       30. Meta can also connect all information it collects to analyze and generate reports  
 17 regarding advertising campaigns, create custom audience sets that can be shared with other  
 18 advertisers, and "use your Event Data for ads delivery only after aggregating such Event Data with  
 19 other data collected from other advertisers or otherwise collected on Meta Products."<sup>32</sup>

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20       <sup>25</sup> *Id.*

21       <sup>26</sup> *Id.*

22       <sup>27</sup> META, HANDLING DUPLICATE PIXEL AND CONVERSIONS API EVENTS, <https://developers.facebook.com/docs/marketing-api/conversions-api/deduplicate-pixel-and-server-events/> ("Once your event fulfills both conditions, we keep the first one and remove the following one. If a server and browser event arrive at approximately the same time (within 15 seconds of each other), we favor the browser event.").

23       <sup>28</sup> *Id.*

24       <sup>29</sup> META, META BUSINESS TOOLS TERMS, <https://m.facebook.com/legal/businesstech>.

25       <sup>30</sup> *Id.*

26       <sup>31</sup> *Id.*

27       <sup>32</sup> *Id.*

1       31. Further, Meta can use the event data to help websites like Defendant’s “reach people  
 2 with transactional and other commercial messages on [Facebook] Messenger and other Meta  
 3 Products.”<sup>33</sup>

4       32. Finally, Meta can use the information it collects “to personalize the features and  
 5 content (including ads and recommendations) that we show people on and off our Meta  
 6 Products.”<sup>34</sup>

7       33. Thus, Meta has the capability to use the information it wiretaps for purposes other  
 8 than simply providing a recording to its customers, including but not limited to its own contact  
 9 information matching; measurement and analytics services; ad targeting; commercial and  
 10 transactional messages; ad delivery improvement; feature and content personalization; and product  
 11 improvement, provision, and securement.

12       **B. Google Analytics**

13       34. Google offers a range of advertising software, one of which is called Google  
 14 Analytics.

15       35. “Google Analytics is a platform that collects data from [] websites and apps to  
 16 create reports that provide insights” for businesses.<sup>35</sup> This is made possible by the Google  
 17 Analytics Pixel, a piece of code installed on a website that collects information on how website  
 18 users interact with a business’s website, such as “how many users bought an item … by tracking  
 19 whether they made it to the purchase-confirmation page.”<sup>36</sup>

20       36. Google advertises this service can “[m]onitor activity on your site as it happens.”<sup>37</sup>

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23       <sup>33</sup> *Id.*

24       <sup>34</sup> *Id.*

25       <sup>35</sup> GOOGLE, HOW GOOGLE ANALYTICS WORKS,  
 https://support.google.com/analytics/answer/12159447?hl  
 =en&ref\_topic=14089939&sjid=2827624563183915220-NC.

26       <sup>36</sup> *Id.*

27       <sup>37</sup> GOOGLE, THE FINER POINTS, https://marketingplatform.google.com/about/analytics/features/.

1       37. Google's business model involves entering into voluntary partnerships with various  
 2 companies and surveilling communications on their partners' websites with the Google Analytics  
 3 Pixel.

4       38. Thus, through websites that employ Google's services, Google directly receives the  
 5 electronic communications of website visitors entered into websites via website features like search  
 6 bars.

7       39. That information is then analyzed by Google before being provided to any entity  
 8 that was a party to the conversation (like Defendant). Upon information and belief, in order to  
 9 analyze the intercepted communications, Google views the intercepted communications. As such,  
 10 on information and belief, Google viewed Plaintiff and Class Members' communications with  
 11 Defendant in order to provide advertising services to Defendant.

12       40. Once Google intercepts website communications, it has the capability to use such  
 13 information for its own purposes. "Google uses the information shared by sites and apps to deliver  
 14 [] services, maintain and improve them, develop new services, measure the effectiveness of  
 15 advertising, protect against fraud and abuse, and personalize content and ads you see on Google  
 16 and on [] partners' sites and apps."<sup>38</sup>

17       41. Google's range of software services is based on Google's ability to collect and  
 18 analyze information about consumers' web behavior and deliver targeted advertising to select  
 19 consumers based on their web habits. This involves collecting visitor information from thousands  
 20 of websites and then analyzing that information in order to deliver targeted advertising and group  
 21 web users so that they can be targeted for products and categories they are interested in.

22       42. Information from websites, like Defendant's Website, is central to Google's ability  
 23 to successfully market its advertising capabilities to future clients.

24       43. In sum, Google has the capability to use the communications it intercepts for own  
 25 purposes other than simply providing a recording to its customers, including but not limited to (i)  
 26 improving its own products and services; (ii) developing new Google for Business and Google

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27       <sup>38</sup> GOOGLE, GOOGLE PRIVACY AND TERMS, <https://policies.google.com/technologies/partner-sites>.  
 28

1 Analytics products and services; and (iii) analyzing website visitors' communications to assist with  
 2 and data analytics and targeted advertising.

3 **C. Microsoft Advertising**

4 44. Microsoft offers a range of advertising services. One of these services is called  
 5 "Conversion Tracking."<sup>39</sup> Microsoft states that Conversion Tracking allows Microsoft's "platform  
 6 [] match [its customers] to searchers across [Microsoft's] network who are more relevant to [its  
 7 customers'] business."<sup>40</sup> In order for Conversion Tracking to take places, Microsoft requires that  
 8 its customers set up a "Universal Event Tracking (UET) Tag" on their websites.<sup>41</sup> To do this,  
 9 Microsoft's customers must "add the UET tag tracking code directly into [their] website[s'] code  
 10 using JavaScript."<sup>42</sup>

11 45. Microsoft describes the UET as a "powerful tool that records what customers do on  
 12 your website" and describes that "[b]y creating one UET tag and placing it across your website,  
 13 Microsoft Advertising will collect data that allows you to track conversion goals and target  
 14 audiences with remarketing lists."<sup>43</sup> Specifically, a UET tag will allow a business to track things  
 15 like "the quantity of people that visited a specific page or section" on its website and to create  
 16 custom events to track.<sup>44</sup>

21 <sup>39</sup> MICROSOFT ADVERTISING, CONVERSION TRACKING, <https://about.ads.microsoft.com/en-us/solutions/tools/conversion-tracking>.

22 <sup>40</sup> *Id.*

23 <sup>41</sup> *Id.*

24 <sup>42</sup> MICROSOFT ADVERTISING, HOW DO I ADD A TAG TO MY WEBSITE?,  
<https://help.ads.microsoft.com/#apex/ads/en/56688/-1>

25 <sup>43</sup> MICROSOFT ADVERTISING, UNIVERSAL EVENT TRACKING, [https://about.ads.microsoft.com/en-us/solutions/tools/universal-event-tracking#:~:text=Universal%20Event%20Tracking%20\(UET\)%20is,target%20audiences%20with%20remarketing%20lists](https://about.ads.microsoft.com/en-us/solutions/tools/universal-event-tracking#:~:text=Universal%20Event%20Tracking%20(UET)%20is,target%20audiences%20with%20remarketing%20lists).

26 <sup>44</sup> *Id.*

1       46.     The UET tag uses a number of cookies.<sup>45</sup> One of these cookies is the MUID  
 2 cookie.<sup>46</sup> The MUID cookie is “[u]sed by Microsoft as a unique identifier” and the purpose is to  
 3 “synchronize the ID across many different Microsoft domains to enable user tracking.”<sup>47</sup>

4       47.     Microsoft’s business model involves entering into voluntary partnerships with  
 5 various companies and surveilling communications on their partners’ websites with the UET tag.

6       48.     Thus, through websites that employ Microsoft’s Conversion Tracking services,  
 7 Microsoft directly receives the electronic communications of website visitors entered into websites  
 8 via website features like search bars.

9       49.     That information is then analyzed by Microsoft before being provided to any entity  
 10 that was a party to the conversation (like Defendant). Upon information and belief, in order to  
 11 analyze the intercepted communications, Microsoft views the intercepted communications. As  
 12 such, on information and belief, Microsoft viewed Plaintiff and Class Members’ communications  
 13 with Defendant in order to provide advertising services to Defendant.

14       50.     Once Microsoft intercepts website communications, it has the capability to use such  
 15 information for its own purposes, including but not limited to “[p]rovide our products, which  
 16 includes updating, securing, and troubleshooting, as well as providing support,” to “[i]mprove and  
 17 develop [its] products,” to “operate [its] business, which includes analyzing [its] performance,  
 18 meeting [its] legal obligations, developing [its] workforce, and doing research.”<sup>48</sup>

19       51.     Microsoft’s range of software services is based on Microsoft’s ability to collect and  
 20 analyze information about consumers’ web behavior and deliver targeted advertising to select  
 21 consumers based on their web habits. This involves collecting visitor information from thousands  
 22 of websites and then analyzing that information in order to deliver targeted advertising and group  
 23 web users so that they can be targeted for products and categories they are interested in.

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24       <sup>45</sup> MICROSOFT ADVERTISING, FAQ: UNIVERSAL EVENT TRACKING,  
 25 https://help.ads.microsoft.com/#apex/ads/en/53056/2-500.

26       <sup>46</sup> *Id.*

27       <sup>47</sup> STACKABLE, COOKIE POLICY, https://wpstackable.com/cookie-policy/.

28       <sup>48</sup> MICROSOFT, MICROSOFT PRIVACY STATEMENT, https://privacy.microsoft.com/en-us/privacystatement.

1       52. Information from websites, like Defendant’s Website, is central to Microsoft’s  
 2 ability to successfully market its advertising capabilities to future clients.

3           **D. Snap Pixel**

4       53. Snap owns the popular messaging and social networking app called Snapchat. Snap  
 5 also provides services to businesses, such as advertising services.<sup>49</sup> Specifically, Snap advertising  
 6 is suitable for businesses wanting to target their advertising towards “Gen Z and Millennials.”<sup>50</sup>

7       54. Among Snap’s advertising tools, Snap offers the Snap Pixel.<sup>51</sup> The Snap Pixel “is a  
 8 piece of JavaScript code” that is installed on businesses’ websites.<sup>52</sup> The Snap Pixel is used to  
 9 track and collect consumers’ actions on a business’s website “such as page views, add-to-cart  
 10 actions, purchases, and sign-ups.”<sup>53</sup> The data collected via the Snap Pixel is then used to “allow  
 11 businesses to connect with Snapchatters based on their online and real world interests and  
 12 behaviors”<sup>54</sup> through creating “Custom Audiences to reach people who’ve already engaged with  
 13 [the] business” or creating “Lookalike Audiences to reach people who are similar to [businesses’]  
 14 current customers.<sup>55</sup> Businesses using Snap’s advertising tools can even “[r]each Snapchatters  
 15 based on their past buying patterns or viewing behaviors” by tapping into Snap’s “expansive data  
 16 marketplace” with “third-party custom audiences.”<sup>56</sup>

17       55. When the Snap Pixel is used on an entry to a website, it is not like a tape recorder or  
 18 a “tool” used by one party to record the other. Instead, the Snap Pixel involves Snap, a separate  
 19 and distinct third-party entity from the parties in the conversation, using the Snap Pixel to  
 20 eavesdrop on, record, extract information from, and analyze a conversation to which it is not a

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22       <sup>49</sup> SNAP, <https://forbusiness.snapchat.com/>.

23       <sup>50</sup> *Id.*

24       <sup>51</sup> SNAP, <https://forbusiness.snapchat.com/advertising/snap-pixel#about>.

25       <sup>52</sup> *Id.*

26       <sup>53</sup> *Id.*

27       <sup>54</sup> SNAP, <https://forbusiness.snapchat.com/blog/snapchat-ads-targeting-options-reach-your-target-audience-on-snapchat>.

28       <sup>55</sup> *Supra* note 60.

29       <sup>56</sup> *Supra* note 63.

1 party. This is so because Snap itself collects the content of any conversation. That information is  
 2 then analyzed by Snap before being provided to any entity that was a party to the conversation (like  
 3 Defendant).

4 56. Upon information and belief, in order to analyze the intercepted communications,  
 5 Snap views the intercepted communications. As such, on information and belief, Snap viewed  
 6 Plaintiff and Class Members' communications with Defendant in order to provide advertising  
 7 services to Defendant.

8 57. Once Snap intercepts the Website communications, it has the capability to use such  
 9 information for its own purposes. For example, Snap "and its affiliates" can utilize Conversion  
 10 Data—data gathered via the Snap Pixel related to actions consumers take on businesses' websites  
 11 used to generate Custom audiences—to "improve and supplement [its advertising] Services  
 12 (including to optimize Snap's targeting and ad effectiveness),"<sup>57</sup> and to "develop and improve the  
 13 algorithms and machine learning models (an expression of an algorithm that combs through  
 14 significant amounts of data to find patterns or make predictions) that make [Snap's] features and  
 15 Services work."<sup>58</sup>

16 58. Snap's range of software as a service "SaaS" services is based on Snap's ability to  
 17 collect and analyze information about consumers' web behavior and deliver targeted advertising to  
 18 select consumers based on their web habits. This involves collecting visitor information from  
 19 thousands of websites and then analyzing that information in order to deliver targeted advertising  
 20 and group web users so that they can be targeted for products and categories they are interested in.

21 59. Information from websites, like Defendant's Website, is central to Snap's ability to  
 22 successfully market its advertising capabilities to future clients.

#### 23       **E.     Heap Analytics**

24 60. Heap provides a service called Autocapture for its clients to track consumers'  
 25 activities on their websites. Heap describes Autocapture as a tool that allows Heap to collect "all

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26  
 27       <sup>57</sup> SNAP, SNAP CONVERSION TERMS, <https://snap.com/en-US/terms/snap-conversion>.  
 28       <sup>58</sup> SNAP, PRIVACY POLICY, <https://values.snap.com/privacy/privacy-policy>.

1 the data on your customers—automatically. What they click. Where they go. What they do, even  
 2 when you’re not looking.”<sup>59</sup>

3       61.     Heap advertises that its Autocapture software is different from other companies’  
 4 tracking tools because other tools rely on manually setting up tracking code to capture users’  
 5 interactions with specific buttons/aspects of a website.<sup>60</sup> . Instead, Autocapture collects everything  
 6 that occurs on the website automatically.<sup>61</sup>

7       62.     Once Heap tracks and collects all the activities that consumers take on a website,  
 8 Heap analyses and interprets that data to identify user behavior patterns.<sup>62</sup> Heap also provides what  
 9 it calls Behavioral Segmentation which is “a type of analysis that sorts users according to their  
 10 behavior in an app or website and looks for patterns among different groups.”<sup>63</sup> Behavioral  
 11 Segmentation allows Heap’s clients to “target better customers and prioritize maximizing the  
 12 behaviors and metrics [that they are] trying to produce.”<sup>64</sup>

13       63.     Upon information and belief, in order to analyze the intercepted communications,  
 14 Heap views the intercepted communications. As such, on information and belief, Heap viewed  
 15 Plaintiff and Class Members’ communications with Defendant in order to provide advertising  
 16 services to Defendant.

17       64.     As such, besides collecting all consumer activity on a website, Heap’s services also  
 18 involve analyzing that collected data to provide clients with informative analytics. Heap also  
 19 admits it “ ‘sold’ or ‘shared’ [Californian visitors’] identifiers, demographic information, Internet  
 20 or other electronic network activity information, approximate geolocation, and inferences drawn  
 21 from the above... to or with entities who provide advertising, marketing, or audience measurement;

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23       <sup>59</sup> HEAP, HOW HEAP WORKS, <https://www.heap.io/why-heap/how-heap-works>

24       <sup>60</sup> HEAP, Episode 1: Autocapture, <https://www.heap.io/why-heap/how-heap-works>.

25       <sup>61</sup> *Id.*

26       <sup>62</sup> HEAP, DOWN THE FUNNEL, <https://www.heap.io/topics/how-to-evaluate-behavioral-analytics-software>.

27       <sup>63</sup> HEAP, WHY YOU SHOULD START USING BEHAVIORAL SEGMENTATION,  
<https://www.heap.io/topics/why-you-should-start-using-behavioral-segmentation>.

28       <sup>64</sup> *Supra* note 60.

1 and social networks.”<sup>65</sup> “The business or commercial purposes of ‘selling’ or ‘sharing’ personal  
 2 information is to assist us with advertising, marketing, audience measurement, and other  
 3 functionality on our digital properties.”<sup>66</sup>

4 **II. DEFENDANT USES THE THIRD PARTIES’ TRACKERS TO  
 5 INTERCEPT ITS WEBSITE USERS’S COMMUNICATIONS**

6 **A. Defendant Enables Meta, Through The Meta Pixel, To Intercept  
 7 Users’ Communications With Defendant.**

8 65. Defendant has integrated the Meta Pixel, into its Website, aloyoga.com. By  
 9 integrating the Pixel into its Website code, Defendant has enabled Meta to intercept Defendant’s  
 10 website users’ communications with Defendant as users search for products on aloyoga.com  
 11 without users’ consent.

12 66. Through the Meta Pixel, Defendant enables Meta to intercept users’  
 13 communications with Defendant. When a user conducts a search on Defendant’s website,  
 14 communicating with Defendant that they are interested in a particular product, because Defendant  
 15 installed the Meta Pixel on its Website, the Meta Pixel generates two events—a Search event and a  
 16 PageView event—that share metadata to Meta. The metadata for these events includes the exact  
 17 search terms users input in Defendant’s Website’s search bar.

18 67. For example, when a user searches for “thongs” on aloyoga.com, the Meta Pixel  
 19 generates a Search event that includes metadata that tells Meta the user searched for “thongs.” *See*  
 20 Figures 1-2

21  
 22  
 23  
 24  
 25  
 26 <sup>65</sup> HEAP, CALIFORNIA PRIVACY NOTICE FOR CALIFORNIA RESIDENTS,  
 27 <https://www.heap.io/privacy#california-notice>.

28 <sup>66</sup> *Id.*

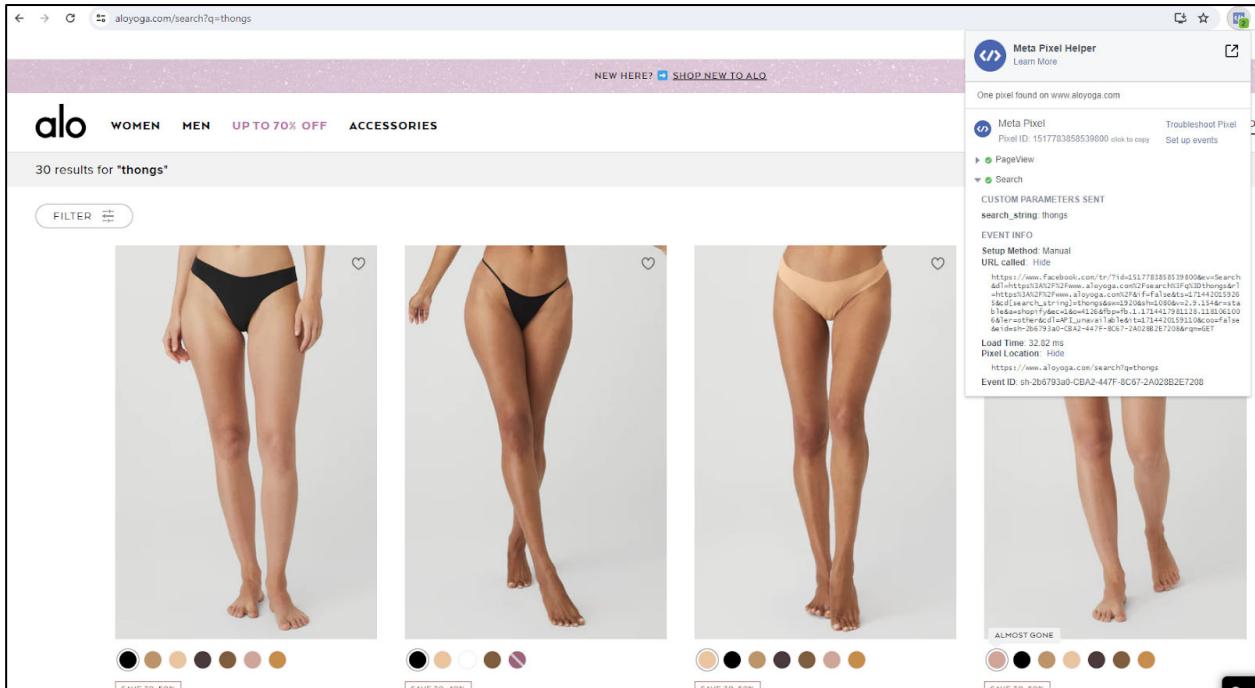


Figure 1

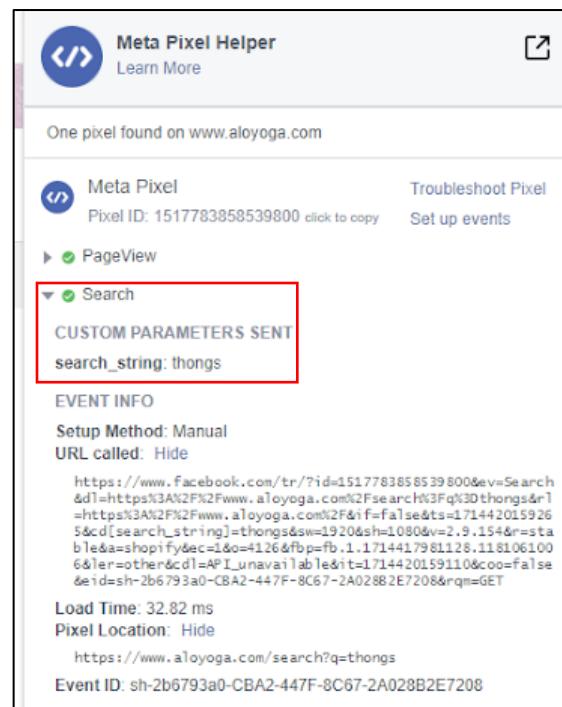
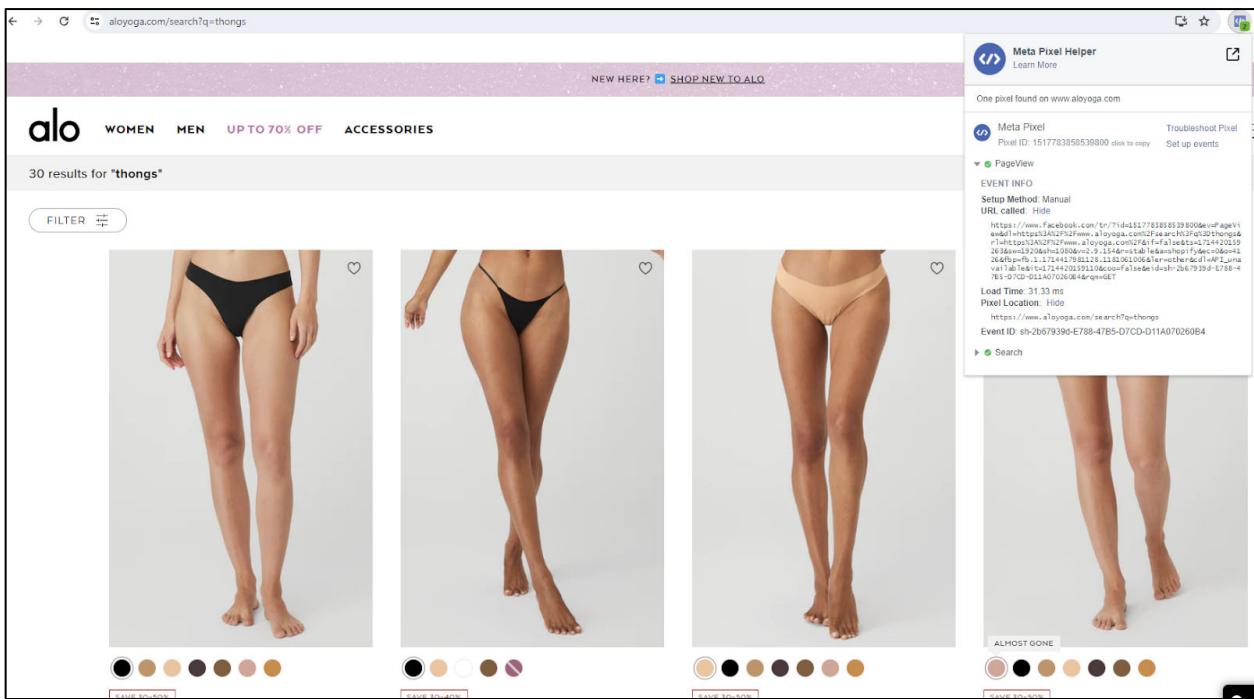
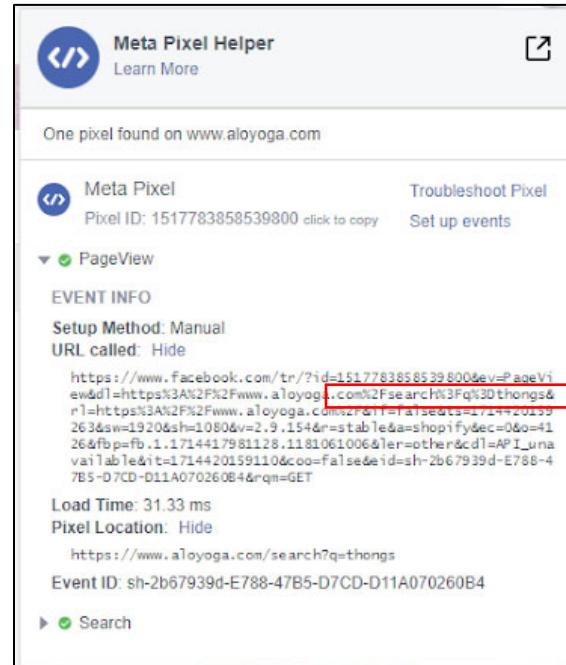


Figure 2

68. The Meta Pixel also generates a PageView event that similarly includes metadata that tells Meta the exact terms a user searched for. For example, Figures 3-4 show the PageView event that shares metadata with Meta which includes a user's search for "thongs."

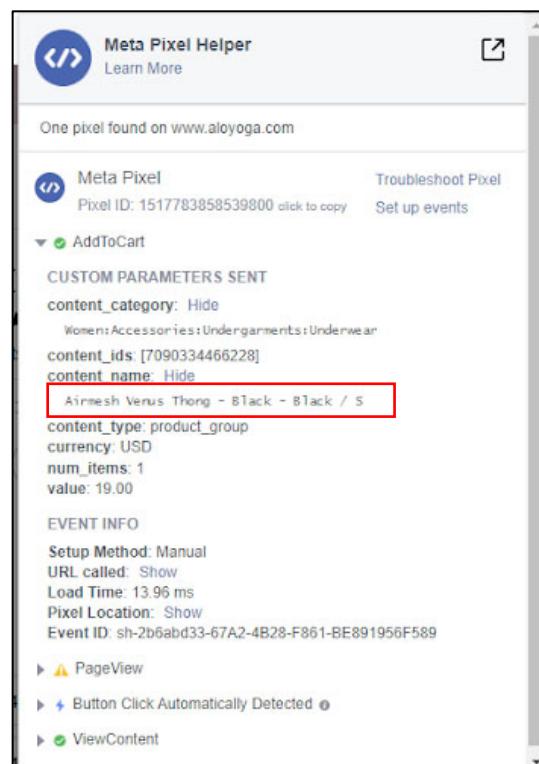


**Figure 3**



**Figure 4**

69. When a consumer decides to purchase an item, Meta knows this too. For example, when a user adds an item to their cart, Meta generates an “AddToCart” event that sends metadata to Meta telling Meta the exact name of the product the user chose to add to their cart. As seen in Figure 5, the Website user added a size small, black Airmesh Venus Thong to their cart and Meta obtained that information.



**Figure 5**

**B. Defendant Enables Google, Through Google Analytics, To Intercept Users' Communications With Defendant.**

70. Defendant has also integrated Google Analytics, into its Website aloyoga.com. By integrating Google Analytics into its Website code, Defendant has enabled Google to intercept Defendant's Website users' communications with Defendant as users search for products on aloyoga.com without users' consent.

71. Through Google Analytics, Defendant enables Google to intercept users' communications with Defendant. When a user conducts a search on Defendant's website, communicating with Defendant that they are interested in a particular product, because Defendant

1 installed Google Analytics on its Website, Google Analytics collects the URL for the page on  
 2 Defendant's Website that the user is on. The URL includes the search terms the user typed into the  
 3 search bar on Defendant's Website.

4       72. For example, when a user searches for "thongs" on Alo's Website, Google  
 5 Analytics intercepts this communication by collecting the URL of the web page which includes the  
 6 exact search terms. *See Figures 6-7.*

▼ Request Headers	
:authority:	www.google-analytics.com
:method:	POST
:path:	/collect?v=1&_v=j101&a=1032420585&t=pageview&_s=1&dl=https%3A%2F%2Fwww.aloyoga.com%2Fsearch%3Fq%3Dthongs&dp=%2Fsearch%3Fq%3Dthongs&ul=en-us&de=UTF-8&dt=Search%3A%2063%20results%20found%20for%20%22thongs%22%20%7C%20Alo%20Yoga&sd=24-bit&sr=1920x1080&vp=424x911&je=0&_u=QCCAgEABAAAAGCgCIAB~&jid=1543343119&gjid=580475644&cid=51723375.1714417981&tid=UA-323378-2&_gid=1297530433.1714417981&_slc=1&did=BwEt&z=1444299570
:scheme:	https
Accept:	/*
Accept-Encoding:	gzip, deflate, br, zstd
Accept-Language:	en-US,en;q=0.9
Content-Length:	0
Content-Type:	text/plain
Cookie:	ar_debug=1
Origin:	https://www.aloyoga.com
Priority:	u=1,i
Referer:	https://www.aloyoga.com/
Sec-Ch-Ua:	"Chromium";v="124", "Google Chrome";v="124", "Not-A.Brand";v="99"
Sec-Ch-Ua-Mobile:	0
Sec-Ch-Ua-Platform:	"Windows"
Sec-Fetch-Dest:	empty
Sec-Fetch-Mode:	cors
Sec-Fetch-Site:	cross-site
User-Agent:	Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/124.0.0.0 Safari/537.36

Figure 6

```
POST
/j/collect?v=1&_v=j101&a=1032420585&t=pageview&_s=1&dl=https%3A%2F%2Fwww.aloyoga.com%2Fsearch%3Fq%3Dthongs&dp=%2Fsearch%3Fq%3Dthongs&ul=en-us&de=UTF-8&dt=Search%3A%2063%20results%20found%20for%20%22thongs%22%20%7C%20Alo%20Yoga&sd=24-bit&sr=1920x1080&vp=424x911&je=0&_u=QCCAgEABAAAAGCgCIAB~&jid=1543343119&gjid=580475644&cid=51723375.1714417981&tid=UA-323378-2&_gid=1297530433.1714417981&_slc=1&did=BwEt&z=1444299570
```

Figure 7

19       73. Further, when a Website user decides to purchase an item, Google will know the  
 20 name of the exact item. For example, when a user adds an item to their cart, Google will receive  
 21 the exact name of the product the user chose to add to their cart. As seen in Figure 8, when a  
 22 Website user adds the black, size small, Airmesh Venus Thong to their cart, Google obtains that  
 23 information.  
 24  
 25  
 26  
 27  
 28

	Name	X Headers	Payload	Preview	Response	Initiator	Timing	Cookies	
1	0?...								
2	h?...	Server:			Golfe2				
3	i?...	▼ Request Headers							
4	o? ...	:authority:			analytics.google.com				
5	co... 95... 95... 95... 11... 11... pi... tr/... tri... 95... 95... 95... ts... h?... e?... un... p?... 27... co... i?...	:method: :path: /g/collect?v=2&tid=G- D6PX7W3MWT&gtm=45je44t0v892345747z872177285za200&_p=1714601897048&gcs=G111&gcd=13t3t3t5&npa=0&dma=0&cld=51723375.1714417981&ul=en-us&sr=1920x1080&ir=1&uaa=x86&uab=64&uafvl=Chromium%3B124.0.6367.78%7CGoogle%2520Chrome%3B124.0.6367.78%7CNot-A.Brand%3B99.0.0.0&uamb=0&uam=8&uap=Windows&uavp=15.0.0&uaw=0&are=1&pae=1&pscld=noapi&eu=EA&sid=1714600315&sct=3&seg=1&dl=https%3A%2Fwww.aloyoga.com%2Fcart&dr=https%3A%2F%2Fwww.aloyoga.com%2Fproducts%2Fa0285w-airmesh-venus-thong-black%3Fvariant%3D41346023653556&dt=Your%20Shopping%20Cart%20%7C%20Alo%20Yoga&_s=2&tfd=0801							
6		:scheme:			https				
7		Accept:			/*				
8		Accept-Encoding:			gzip, deflate, br, zstd				
9		Accept-Language:			en-US,en;q=0.9				
10		Content-Length:			262				
11		Content-Type:			text/plain; charset=UTF-8				
12		Cookie:			_Secure-3PAPISID=T_E9V9lxL6SAMP6j/ASuwNFbulqJZATVSN; 1P_JAR=2024-05-01-17; NID=513=O2mnyzgJ7hiboJDgrTm2z9ckHbq5lmFE80q5v9AHItX4ABR8O0b1YDsPlsuwfqf3d1NPxzUhrZdAmHbHR7T0eaCPU9B1DCY_g7EyDiYVdxRBmBjkBgbvKuZBHpZEGrSiJyXQoJkUVZ1AhMQDDinYoEquPO6tbKmBDsVoFUPEM8Inng4pzZgbkLDsbDaCGQwBHA_YvvRuZGIGhGCPeTrkrNIj7tOitPgJ7-FhrSNI0U6YzbzXzhFOpkzQnh5wSkqrRhvcXukRGbUg6gaNh_RefQD7_RajIgaJcL2aPh5bExuqBe5nyCF_Zrlf0IUPlwCWxs7iN8Qzm2kqKI7yTJKO0zNhOsplHGKYrL1uEF-1for4UEIG8WBXFewwGAVZR8Q1H0kKip4Fpm4eiUbjq4Ph3Yt_cx_2kG13NcgordADJ4OvOzLoxHRGvIJHjZrfydK2gZjnAa9-WYHm6Oh29mt2wCXyDAXc47HFAtyYviV_Ho15wxZQE96Qn5nvdfN-HTjsz6ylvHonxdbYq6EdzGGUjpQnyTmBoXEqgFTBffjoSOQomdj6F0SEsQw5KEyWiiVF484sJFQgNiJO2NA5FgWmmmb70l7CotmHYVFL7WrUPCHSVyw; _Secure-3PSID=g.a000AjnKRyh8rrMed3QICPLPTzOpJqzx9nnUEk0G9zMYW9ITQjEHbEkQ6DStx5iMptIBL-				
13					536 rec				

**Figure 8**

**C. Defendant Enables Microsoft, Through Microsoft's Conversion Tracking, To Intercept Users' Communications With Defendant.**

74. Defendant has also integrated Microsoft's UET tag, into its Website [aloyoga.com](http://aloyoga.com).

By integrating the UET tag, into the Website's code, Defendant has enabled Microsoft to intercept Defendant's users' communications with Defendant as users search for products on [aloyoga.com](http://aloyoga.com) without users' consent.

75. Through Microsoft's Conversion Tracking via the UET tag, Defendant enables Microsoft to intercept users' communications with Defendant. When a user conducts a search on Defendant's website, communicating with Defendant that they are interested in a particular product, because Defendant installed the UET tag on its Website, Microsoft collects the URL for the page on Defendant's Website that the user is on. The URL includes the search terms the user typed into the search bar on Defendant's Website.

76. For example, when a user searches for “thongs” on Alo’s Website, Microsoft intercepts this communication by collecting the URL of the web page which includes the exact search terms. *See Figures 9-10.*

▼ Request Headers	
:authority:	bat.bing.com
:method:	GET
:path:	/action/0?ti=23003002&Ver=2&mid=559b7f12-1ceb-4a88-a58d-c683932e83&sid=7ec44080065c11efa875fd90dbb75e03&vid=3ff6940d72611ee95de5f65a23d331d&vids=0&msclkid=N&uach=pv%3D15.0.0&pi=918639831&lg=en-US&sw=1920&sh=1080&sc=24&tl=Search%3A%2063%20results%20found%20for%20%22thongs%22%20%7C%20Al%20Yoga&p=https%3A%2F%2Fwww.aloyoga.com%2Fsearch%3Fq%3Dthongs&r=https%3A%2F%2Fwww.aloyoga.com%2F&lt=575&evt=pageLoad&sv=1&m=123365
:scheme:	https
Accept:	image/*,audio/*,video/*,application/xml,application/xhtml+xml,*/*;q=0.8
Accept-Encoding:	gzip, deflate, br, zstd
Accept-Language:	en-US,en;q=0.9
Cookie:	MUID=209E0AC0EE186DE534581973EF9C6CE3; SRCHD=AF=NOFORM; SRCHUID=V=2&GUID=5FD6CAE7D12C4844A008FE3A57B0688&dmnchg=1; SRCHUSR=DOB=20231213; SRCHHPGUSR=SRCHLANG=en; MSPTC=cx2eahT53SM1NXGN99WdRF7hUM2k8XOe23udSaWIQM; MR=0
Priority:	i
Referer:	https://www.aloyoga.com/
Sec-Ch-Ua:	"Chromium";v="124", "Google Chrome";v="124", "Not-A-Brand";v="99"
Sec-Ch-Ua-Mobile:	?
Sec-Ch-Ua-Platform:	"Windows"
Sec-Fetch-Dest:	image
Sec-Fetch-Mode:	no-cors
Sec-Fetch-Site:	cross-site
User-Agent:	Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/124.0.0.0 Safari/537.36

**Figure 9**

bat.bing.com  
GET  
/action/0?ti=23003002&Ver=2&mid=559b7f12-1ceb-4a88-a58d-c68393282a83&sid=7ec44080065c11efa875fd90dbb75e03&vid=3ffb6940d72611ee95de5f65a23d331d&vids=0&msclkid=N&uach=pv%3D15.0.0&pi=918639931&lg=en-US&sw=1920&sh=1080&sc=24&rlt=search%3A%2063%20results%20found%20for%20%22thongs%22%20%7C%20Alo%20Yoga&p=https%3A%2F%2Fwww.aloyoga.com%2Fsearch%3Fq=%Dthongs&r=https%3A%2F%2Fwww.aloyoga.com%2F&lt=575&evt=pageLoad&svs=1&n=123365

**Figure 10**

77. Further, when a Website user decides to purchase an item, Microsoft will know the name of the exact item. For example, when a user adds an item to their cart, Microsoft will receive the exact name of the product the user chose to add to their cart. As seen in Figure 11, when a Website user adds the black, size small, Airmesh Venus Thong to their cart, Microsoft obtains that information.

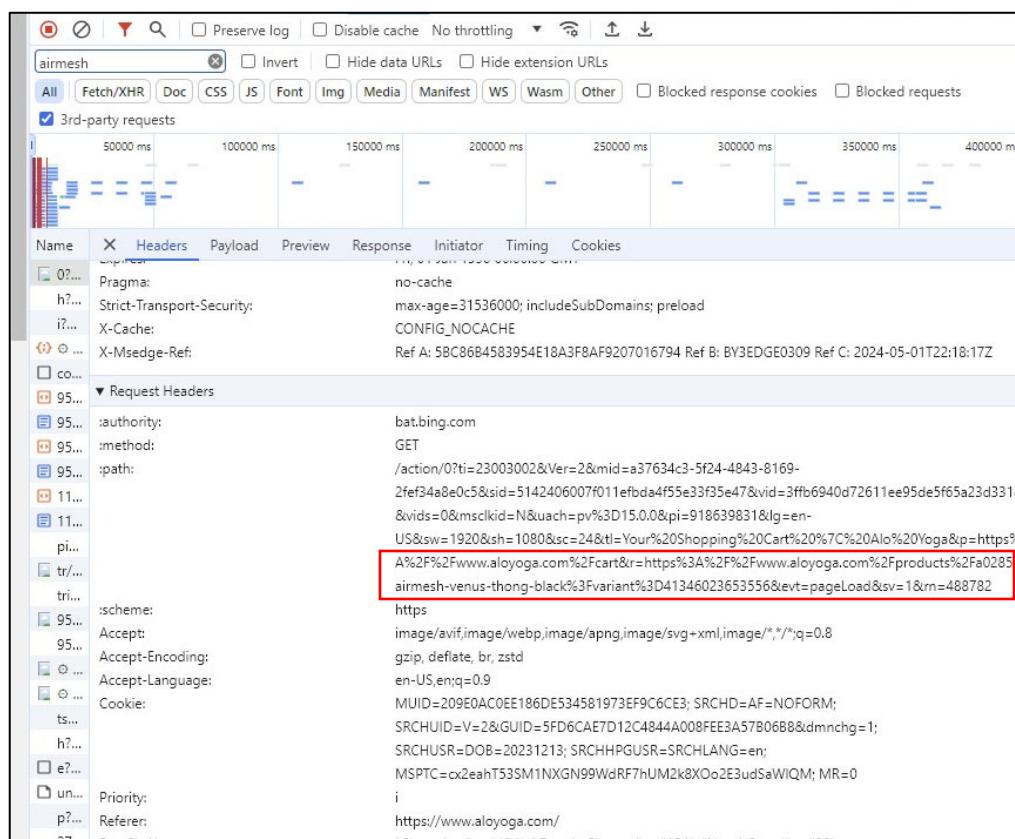


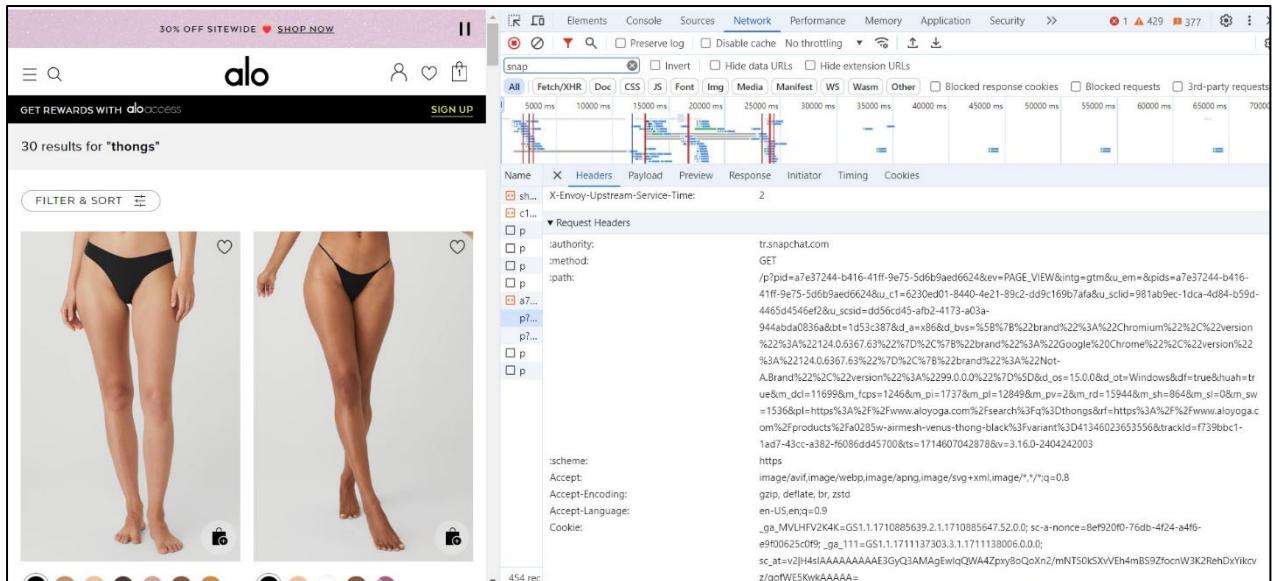
Figure 11

**D. Defendant Enables Snap Through the Snap Pixel To Intercept Users' Communications With Defendant.**

78. Defendant has also integrated the Snap Pixel, into its Website, [aloyoga.com](https://www.aloyoga.com). By integrating the Snap Pixel into its Websites' code, Defendant has enabled Snap to intercept Defendant's Websites users' communications with Defendant as users search for products on [aloyoga.com](https://www.aloyoga.com) without users' consent.

79. When a user conducts a search on [aloyoga.com](https://www.aloyoga.com), communicating with Defendant that they are interested in a particular product, because Defendant installed the Snap Pixel on its Website, Snap collects the URL for the page on Defendant's Website that the user is on. The URL includes the search terms the user typed into the search bar on Defendant's Website.

80. For example, when a user searches for “thongs” on aloyoga.com, Snap intercepts this communication by collecting the URL of the web page which includes the exact search terms. *See Figures 12-13.*

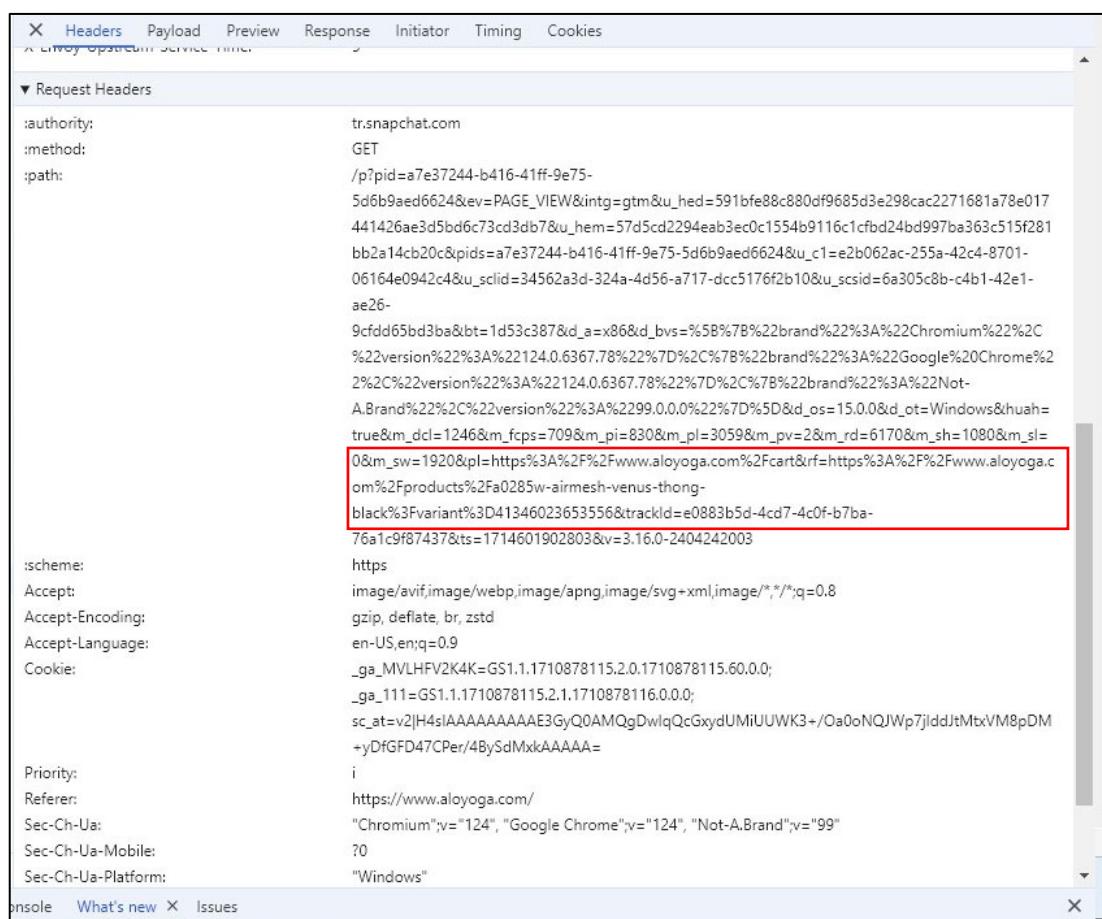


**Figure 12**

tr.snapchat.com  
GET  
/p?pid=a7e37244-b416-41ff-9e75-5d6b9aed6624&ev=PAGE\_VIEW&intg=gtm&u\_em=&pids=a7e37244-b416-41ff-9e75-5d6b9aed6624&u\_c1=6230ed01-8440-4e21-89c2-dd9c169b7afa&u\_sclid=981ab9ec-1dca-4d84-b59d-4465d4546ef2&u\_scsid=dd56cd45-afb2-4173-a03a-944abda0836a&btt=1d53c387&d\_a=x86&d\_bvs=%5B%7B%22brand%22%3A%22Chromium%22%2C%22version%22%3A%22124.0.6367.63%22%7D%2C%7B%22brand%22%3A%22Google%20Chrome%22%2C%22version%22%3A%22124.0.6367.63%22%7D%2C%7B%22brand%22%3A%22Not-A.Brand%22%2C%22version%22%3A%2299.0.0%22%7D%5D&d\_os=15.0.0&d\_ot=Windows&df=true&huah=tr ue&m\_dcl=11699&m\_fcps=1246&m\_pi=1737&m\_pl=12849&m\_pv=2&m\_rd=15944&m\_sh=864&m\_sl=0&m\_sw =1536&pl=https%3A%2F%2Fwww.aloyoga.com%2Fsearch%3Fq%3Dthongs&rf=https%3A%2F%2Fwww.aloyoga.com%2Fproducts%2Fa0285w-airmesh-venus-thong-black%3Fvariant%3D41346023653556&trackId=f739bbc1-1ad7-43cc-a382-f6086dd45700&ts=1714607042878&v=3.16.0-2404242003  
https  
image/avif,image/webp,image/apng,image/svg+xml,image/\*,\*/\*;q=0.8  
gzip, deflate, br, zstd  
en-US,en;q=0.9  
\_ga\_MVLHFV2K4K=GS1.1.1710885639.2.1.1710885647.52.0.0; sc-a-nonce=8ef920f0-76db-4f24-a4f6-e9f00625c0f9; \_ga\_1111=GS1.1.1711137303.3.1.1711138006.0.0;  
sc\_at=v2JH4sIAAAAAAAAAE3GyQ3AMAgEwlqQWA4Zpxy8oQoXn2/mNTS0kSXvVEh4mBS9ZfocnW3K2RehDxYikcvz/qofWE5KwkAAAAA=

**Figure 13**

81. Further, when a Website user decides to purchase an item, Snap will know the name of the exact item. For example, when a user adds an item to their cart, Snap will receive the exact name of the product the user chose to add to their cart. As seen in Figure 14, when a Website user adds the black, size small, Airmesh Venus Thong to their cart, Microsoft obtains that information



**Figure 14**

**E. Defendant Enables Heap To Intercept Users' Communications With Defendant.**

82. Defendant has also integrated Heap's tracking tools, into its Websites, alomoves.com and aloyoga.com. By integrating Heap's tools into its Websites' code, Defendant has enabled Heap to intercept Defendant's Websites users' communications with Defendant as users search for products on aloyoga.com or answer Defendant's onboarding survey on alomoves.com, without users' consent.

83. When a user conducts a search on aloyoga.com, communicating with Defendant that they are interested in a particular product, because Defendant installed Heap on its Website, Heap collects the URL for the page on Defendant's Website that the user is on. The URL includes the search terms the user typed into the search bar on Defendant's Website.

84. For example, when a user searches for “thongs” on aloyoga.com, Heap intercepts this communication by collecting the URL of the web page which includes the exact search terms.

*See Figures 15-16.*

▼ Request Headers	
:authority:	heapanalytics.com
:method:	GET
:path:	/h?
	a=1385202258&u=8502148457391322&v=3925489320870444&s=8221389704180945&b=web&tv=4.0&z=2&h=%2Fsearch&q=%3Fq%3Dthongs&d=www.aloyoga.com&t=Search%3A%2063%20results%20found%20for%20%22thongs%22%20%7C%20allo%20yoga&r=https%3A%2F%2Fwww.aloyoga.com%2F&k=Cart%20Items%20Detailed&k=%5B5%5D&e=Cart%20Value&k=0&k=Cart%20Count&k=0&k=User%20Agent&k=Mozilla%2F5.0%20(Windows%20NT%20%2010.0.0.38%20Win64%3B%20x64)%20AppleWebKit%2F537.36%20(KHTML%20like%20Gecko)%20Chrome%2F124.0.0.0.38%20Safari%2F537.36&k=Shopify%20Theme&k=MS%20ALOV%20Day%20%201%20%209%3A30PM%20Prod%20v29.41.1%20(2024-04-28)&k=Body%20Class&k=template-search%20search&k=1%20Follow&k=false&k>New%20vs.%20Returning&k=Returning&k=Logged%20In&k=anonymous&k=Gender%20%20Preference&k=None&k=Gender%20%20Men%20Count&k=0&k=Gender%20-%20Women%20Count&k=0&k=Session%20Count&k=3&k=Screen%20Orientation&k=Vertical&k=Screen%20Dimensions&k=1920%20%20%201080&k=Screen%20Width&k=441&k=Screen%20Height&k=911&k=Pages%20Viewed&k=7&k=Apple%20Pay%20Enabled&k=false&k=GA-%20%20Mobile%20App%20Equivalent&k=Desktop&k=Search%20Term&k=thongs&t=1714420182876&pr=%2F&sp=r&sp=https%3A%2F%2Fwww.google.com%2F&sp=ts&p=17144200114498&sp=d&sp=www.aloyoga.com&sp=h&sp=%2F&ubv=124.0.6367.78&upv=15.0.0&st=1714420182934
ischeme:	https
Accept:	image/avif,image/webp,image/apng,image/svg+xml,image/*,*/*;q=0.8
Accept-Encoding:	gzip, deflate, br, zstd
Accept-Language:	en-US,en;q=0.9
Priority:	i
Referer:	https://www.aloyoga.com/
Sec-Ch-Ua:	"Chromium";v="124", "Google Chrome";v="124", "Not,A.Brand";v="99"
Sec-Ch-Ua-Mobile:	70
Sec-Ch-Ua-Platform:	"Windows"
Sec-Fetch-Dest:	image
Sec-Fetch-Mode:	no-cors
Sec-Fetch-Site:	cross-site
User-Agent:	Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/124.0.0.0 Safari/537.36

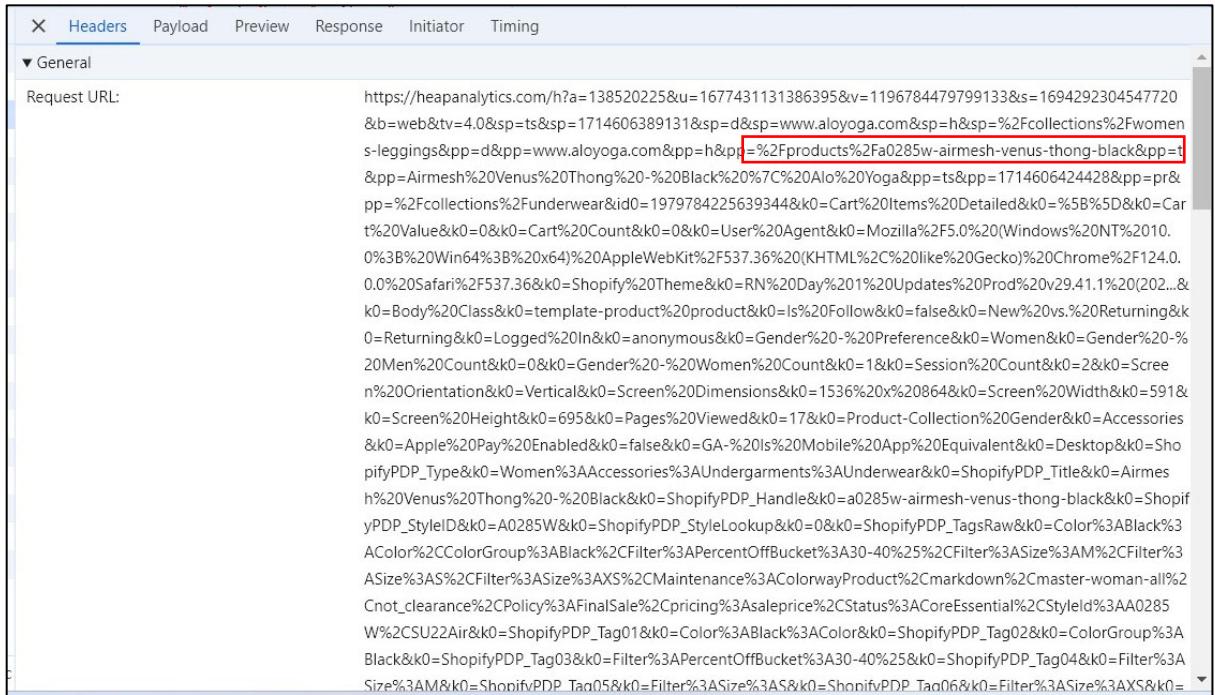
**Figure 15**

/h?  
a=138520225&u=8502148457391322&v=3925489320870444&s=8221389704189945&b=web&tv=4.0&z=2&h=%2Fsearch&q=%3Fa%3Dthongs&i=www.aloyoga.com&t=Search%3A%2063%20results%20found%20for%20%22thongs%22%20%7C%20Alo%20Yoga&r=https%3A%2F%2Fwww.aloyoga.com%2F&k=Cart%20Items%20Detailed&k=%5B%5D&k=Cart%20Value&k=0&k=Cart%20Count&k=0&k=User%20Agent&k=Mozilla%2F5.0%20(Windows%20NT%2010.0%3B%20Win64%3B%20x64)%20AppleWebKit%2F537.36%20(KHTML%2C%20like%20Gecko)%20Chrome%2F124.0.0%20Safari%2F537.36&k=Shopify%20Theme&k=MS%20ALOV%20Day%20%201%20%209%3A30PM%20Prod%20v29.41.1%20(2024-04-28)&k=Body%20Class&k=template-search%20search&k=ls%20Follow&k=false&k>New%20vs.%20Returning&k=Returning&k=Logged%20In&k=anonymous&k=Gender%20-%20Preference&k=None&k=Gender%20-%20Men%20Count&k=0&k=Gender%20-%20Women%20Count&k=0&k=Session%20Count&k=3&k=Screen%20Orientation&k=Vertical&k=Screen%20Dimensions&k=1920%20x%201080&k=Screen%20Width&k=441&k=Screen%20Height&k=911&k=Pages%20Viewed&k=78&k=Apple%20Pay%20Enabled&k=false&k=GA-%20Is%20Mobile%20App%20Equivalent&k=Desktop&k=Search%20Term&k=thongs&ts=1714420182876&pr=%2F&sp=r&sp=https%3A%2F%2Fwww.google.com%2F&sp=ts&s=p+171442011449&sp=d&sp=www.aloyoga.com&sp=h&sp=%2F&ubv=124.0.6367.78&upv=15.0&st=1714420182934  
https  
image/avif/image/webp,image/apng,image/svg+xml,image/\*,/":q=0.8

**Figure 16**

85. When a Website user decides to purchase an item, Heap will also know the name of the exact item a user is purchasing. For example, when a user adds an item to their cart, Heap will receive the exact name of the product the user chose to add to their cart. As seen in Figure 17,

1 when a Website user adds the black, size small, Airmesh Venus Thong to their cart, Heap obtains  
 2 that information.



**Figure 17**

14  
 15       86. Further, Defendant has integrated Heap into alomoves.com. When a user goes  
 16 through the process of signing up for a subscription to Alo Moves, Defendant includes a survey as  
 17 part of that process. The survey asks users a variety of questions, such as what their fitness level is  
 18 and how much time they work out.

19       87. Each time a user responds to one of these survey questions, Defendant allows Heap  
 20 to intercept the answers to the questions. For example, if a user says they are interested in pilates  
 21 and barre classes, Heaps intercepts those communications. *See Figures 18-21.*

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alomoves

← QUESTION 2 OF 5

WHAT CLASSES INTEREST YOU?

Select up to five.

**STRENGTH**

PILATES

BARRE

DANCE

RUNNING

MEDITATION

NUTRITION

YOGA

CORE

GO TO QUESTION 3 Chat Now

1 Headers Payload Preview Response Initiator Timing

Name: h7a=12345678900000000000000000000000

pp: /api/surveys/12345678900000000000000000000000

pp: pr

pp: /

id: 7389646684127897

tr: click

m: div

o: flex-module\_\_flex\_\_2K7w\_SelectBoxBase sc-yxifhu-0 Selected\_\_SelectBox sc-ucd8u-0 l0khm jdUvDr

select-four-pilates

y0: div[react-body][date-react-cache-idSurveyTempEntry-0][date-react-classSurveyTempEntry][date-react-props="{"user":null,"type":"onboarding"}]@div;Box-sc-1fqlm1;0;KUKLHn;@div;Flex-module\_\_flex\_\_2K7w\_j;layoutContainer\_r\_flexBody\_sc-whlml-4;\_jNAYSuj;@div;Flex-module\_\_flex\_\_2K7w\_j;layoutContainer\_flexUpper-sc-whlml-3;\_exmSY;@div;ContentFlex-module\_ContentFlex\_\_327xf;ContentFlex\_ContentFlexStyle-sc-1711ey;0;Flex-module\_\_flex\_\_2K7w\_j;layoutContainer\_FlexContainer\_sc-wchlml-2;\_DRPHV;@div;Fade\_FadeBox\_ec-f1mlap;0;Layout\_FadeBoxContainer-xi-ewv70-0;\_gNmE;Fade-enter-done;1RQca-D;1imevw35h];@div;Selected\_\_Container-sc-ucd8u-2;hexokX;@div#select-four-pilates;Flex-module\_\_flex\_\_2K7w\_j;Selected\_\_SelectBox sc-ucd8u-0 Selected\_\_SelectBox sc-yxifhu-0; l0khm;\_jDwvDr;{color:#000000};

wb: signedIn

ts0: 1709227351978

x0: PILATES  

ubv0: 122.0.6261.71

upv0: 15.0.0

id1: 7527292713421690

ti: click

c: flex-module\_\_flex\_\_2K7w\_SelectBoxBase sc-yxifhu-0 Selected\_\_SelectBox sc-ucd8u-0 l0khm jdUvDr

ll: select-four-barre

y0: div[react-body][date-react-cache-idSurveyTempEntry-0][date-react-classSurveyTempEntry][date-react-props="{"user":null,"type":"onboarding"}]@div;Box-sc-1fqlm1;0;KUKLHn;@div;Flex-module\_\_flex\_\_2K7w\_j;layoutContainer\_r\_flexBody\_sc-whlml-4;\_jNAYSuj;@div;Flex-module\_\_flex\_\_2K7w\_j;layoutContainer\_flexUpper-sc-whlml-3;\_exmSY;@div;ContentFlex-module\_ContentFlex\_\_327xf;ContentFlex\_ContentFlexStyle-sc-1711ey;0;Flex-module\_\_flex\_\_2K7w\_j;layoutContainer\_FlexContainer\_sc-wchlml-2;\_DRPHV;@div;Fade\_FadeBox\_ec-f1mlap;0;Layout\_FadeBoxContainer-xi-ewv70-0;\_gNmE;Fade-enter-done;1RQca-D;1imevw35h];@div;Selected\_\_Container-sc-ucd8u-2;hexokX;@div#select-four-barre;Flex-module\_\_flex\_\_2K7w\_j;Selected\_\_SelectBox sc-ucd8u-0 Selected\_\_SelectBox sc-yxifhu-0; l0khm;\_jDwvDr;{color:#000000};

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Figure 18

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```

    l0khm;_jDwvDr;{color:#000000};

k0: signedIn
k0: false
ts0: 1709227351978
x0: PILATES  
ubv0: 122.0.6261.71
upv0: 15.0.0
id1: 7527292713421690
ti: click

```

Figure 19

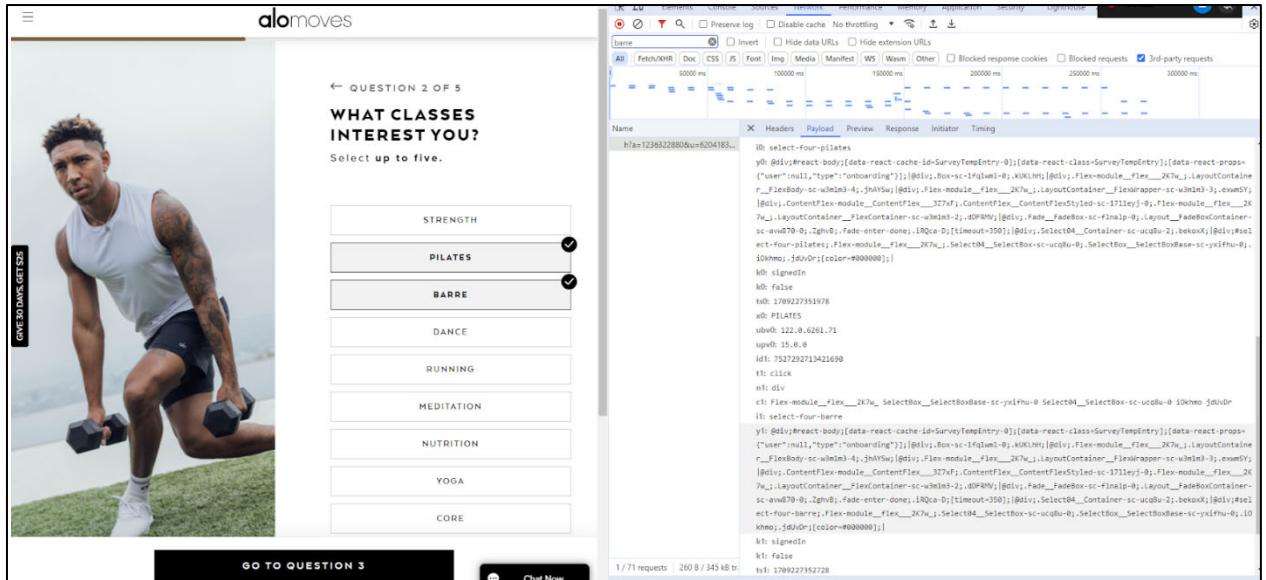


Figure 20

```

id1: 7527292713421690
t1: click
n1: div
c1: Flex-module__flex__2K7w__SelectBox__SelectBoxBase-sc-yxifhu-0 Select04__SelectBox-sc-ucq8u-0 i0khmo jdUvD
i1: select-four-barre
y1: @div;#react-body;[data-react-cache-id=SurveyTempEntry-0];[data-react-class=SurveyTempEntry];[data-react-pr
{"user":null,"type":"onboarding"}];@div;.Box-sc-1fqqlwm1-0;.kUKLH;@div;.Flex-module__flex__2K7w_.LayoutCor
_r_FlexBody-sc-w3m1m3-4;.jhAYSw;@div;.Flex-module__flex__2K7w_.LayoutContainer_FlexWrapper-sc-w3m1m3-3;.e
@div;.ContentFlex-module__ContentFlex__3Z7xF;.ContentFlex__ContentFlexStyled-sc-171leyj-0;.Flex-module__fle
7w_.LayoutContainer_FlexContainer-sc-w3m1m3-2;.dDFRMV;@div;.Fade__FadeBox-sc-flnalp-0;.Layout_FadeBoxCont
sc-avw870-0;.ZghvB;.fade-enter-done;.iRQca-D;[timeout=350];@div;.Select04__Container-sc-ucq8u-2;.bekoxX;@di
rect-four-barre;.Flex-module__flex__2K7w_.Select04__SelectBox-sc-ucq8u-0;.SelectBox__SelectBoxBase-sc-yxifhu
khmo;.jdUvD;[color=#000000];|

```

Figure 21

1       88. The same occurs with every other survey question that Defendant poses, and that its  
 2 users answer. See Figures 22-27.

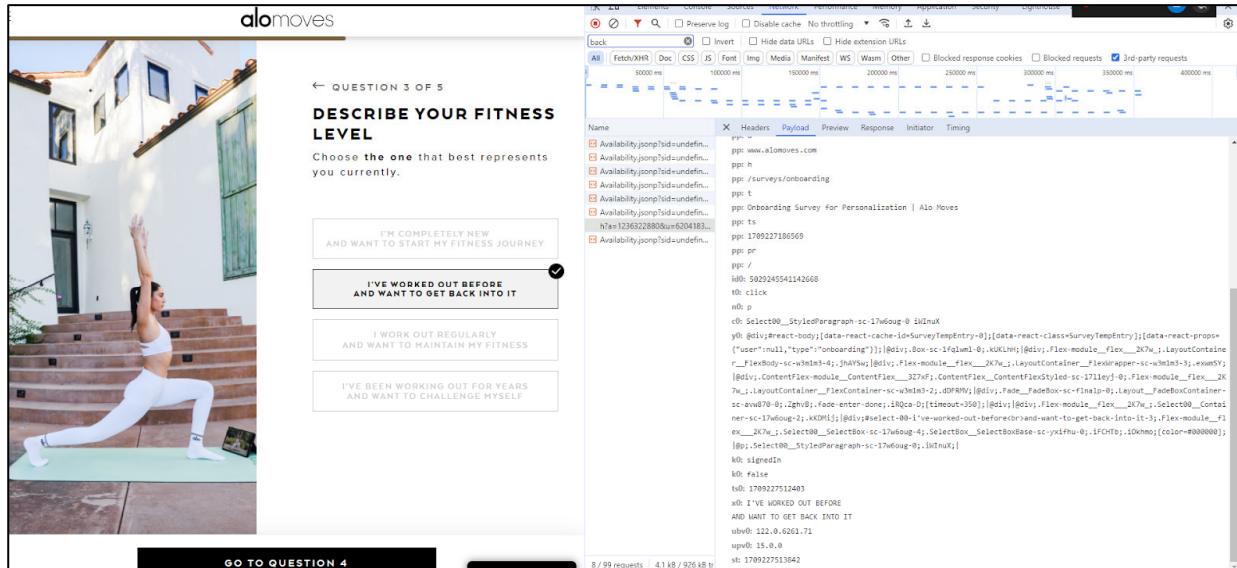


Figure 22

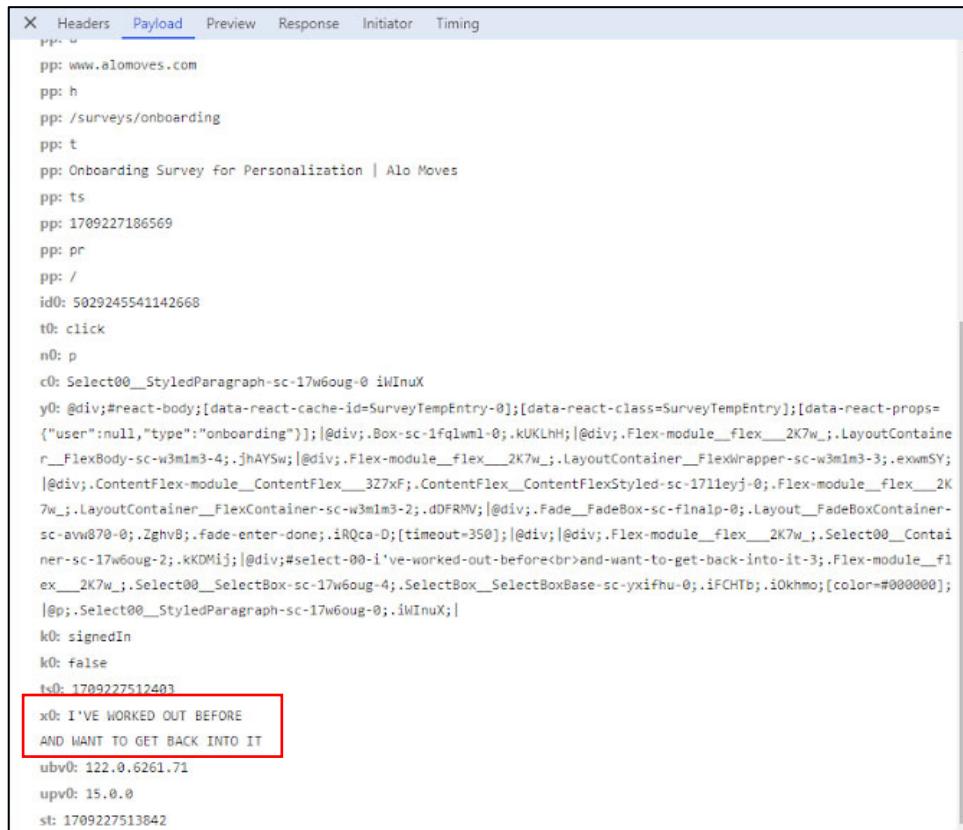


Figure 23

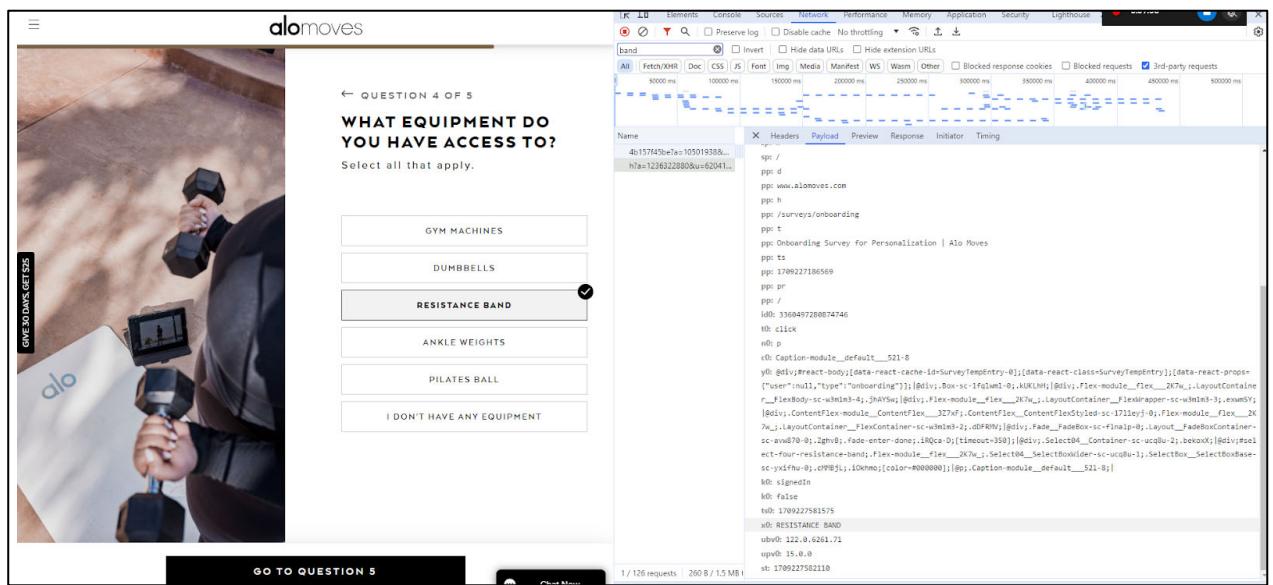


Figure 24

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X Headers Payload Preview Response Initiator Timing

```

--> ...
sp: /
pp: d
pp: www.alomoves.com
pp: h
pp: /surveys/onboarding
pp: t
pp: Onboarding Survey for Personalization | Alo Moves
pp: ts
pp: 1709227186569
pp: pr
pp: /
id0: 3360497280874746
t0: click
n0: p
c0: Caption-module__default__521-8
y0: #div#react-body;[data-react-cache-id=SurveyTempEntry-0];[data-react-class=SurveyTempEntry];[data-react-props={"user":null,"type":"onboarding"}];[@div;.Box-sc-1fq1wml-0;.kUKLHl;@div;.Flex-module__flex__2K7w_];.LayoutContainer_r_FlexBody-sc-w3mim3-4;.jhAYSw;[@div;.Flex-module__flex__2K7w_];.LayoutContainer_FlexWrapper-sc-w3mim3-3;.exwmSY;[@div;.ContentFlex-module_ContentFlex__327xF;.ContentFlex_ContentFlexStyled-sc-171leyj-0;.Flex-module__flex__2K7w_];.LayoutContainer_FlexContainer-sc-w3mim3-2;.dDFRMV;[@div;.Fade_FadeBox-sc-finalp-0;.Layout_FadeBoxContainer-sc-avw870-0;.zghvB;.fade-enter-done;.iRQca-0;[timeout=350];@div;.Select04__Container-sc-ucq8u-2;.bekoxX;@div;#select-four-resistance-band;.Flex-module__flex__2K7w_];.Select04__SelectBoxWider-sc-ucq8u-1;.SelectBox_SelectBoxBase-sc-yxifhu-0;.cMWBjL;.iOKhmo;[color="#000000];@p;.Caption-module__default__521-8;
k0: signedin
k0: false
ts0: 1709227581575
x0: RESISTANCE BAND
ubv0: 122.0.6261.71
upv0: 15.0.0
st: 1709227582110

```

Figure 25

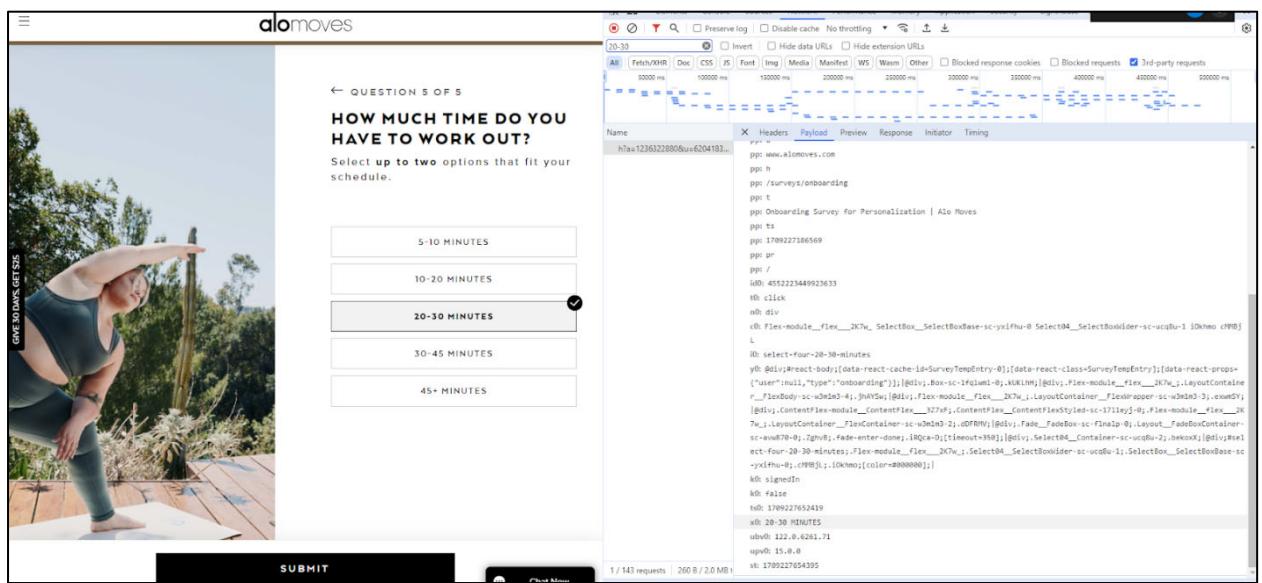


Figure 26

```

headers Payload Preview Response Initiator Timing
pp: www.alomoves.com
pp: h
pp: /surveys/onboarding
pp: t
pp: Onboarding Survey for Personalization | Alo Moves
pp: ts
pp: 1709227186569
pp: pr
pp: /
id0: 4552223449923633
t0: click
n0: div
c0: Flex-module__flex__2K7w_ SelectBox__SelectBoxBase-sc-yxifhu-0 Select04__SelectBoxWider-sc-ucq8u-1 iOkhmo cMWBj
L
i0: select-four-20-30-minutes
y0: @div;#react-body;[data-react-cache-id=SurveyTempEntry-0];[data-react-class=SurveyTempEntry];[data-react-props={"user":null,"type":"onboarding"}];@div;.Box-sc-1fqiuml-0;.kUKLhM;@div;.Flex-module__flex__2K7w_;.LayoutContainer__flexBody-sc-w3m1m3-4;.jHAYSw;@div;.Flex-module__flex__2K7w_;.LayoutContainer__flexWrapper-sc-w3m1m3-3;.exwSY;@div;.ContentFlex-module__ContentFlex__3Z7xP;.ContentFlex__ContentFlexStyled-sc-171leyj-0;.Flex-module__flex__2K7w_;.LayoutContainer__FlexContainer-sc-w3m1m3-2;.dFRNVN;@div;.Fade_FadeBox-sc-f1nAlp-0;.Layout__FadeBoxContainer-sc-avw870-0;.zghvB;.fade-enter-done;.irQca-D;[timeout=350];@div;.Select04__Container-sc-ucq8u-2;.hekoxX;@div;select-four-20-30-minutes;.Flex-module__flex__2K7w_;.Select04__SelectBoxWider-sc-ucq8u-1;.SelectBox__SelectBoxBase-sc-yxifhu-0;.cMWBjL;.iOkhmo;[color=#000000];
k0: signedIn
k0: false
ts0: 1709227652419
x0: 20-30 MINUTES
ubv0: 122.0.6261.71
upv0: 15.0.0
st: 1709227654395

```

Figure 27

1           **F. Search Terms, Pages Views, Purchases, and Survey Answers that**  
 2           **Plaintiff and Class Members Entered on Defendant's Website Are**  
 3           **Communications.**

4           89. Users' search terms, page views, purchases, and answers to Defendant's survey  
 5           questions on Defendant's Websites are communications that are a product of users affirmatively  
 6           entering, and interacting with, information on the Websites (*i.e.*, the confidential communications  
 7           are not procedurally or automatically generated).

8           90. The names of products users search for and view on Defendant's Websites, as well  
 9           as users' answers to Defendant's survey questions are personal information because they "divulge  
 10          a user's personal interests, queries, and habits." *See In re Facebook, Inc. Internet Tracking*  
*Litigation*, 956 F.3d at 605 (9th Cir. 2020).

11           **G. The Third Parties Intercept User's Communications With Defendant**  
 12           **in Real Time**

13           91. When a user accesses Defendant's Website, the Third Parties' software script  
 14           surreptitiously directs the user's browser to contemporaneously send a separate message to Meta,  
 15           Google, Microsoft, Snap, and Heap's servers. This means that when a Website user communicates  
 16           with Defendant via the Websites, their communications are collected by the Third Parties in transit  
 17           or instantaneously as they are delivered *i.e.*, while a particular webpage is loading.

18           92. For example, as shown on a web browser's developer tools, Meta begins sending  
 19           requests for information either while the consumer's browser is setting up a connection with  
 20           Defendant's Website, aloyoga.com, and/or before the webpage completes loading. Figure 28 shows  
 21           Meta received a user's search terms inputted in Defendant's search bar **17.33 thousandths of a**  
**second** after a user hit enter on their search.

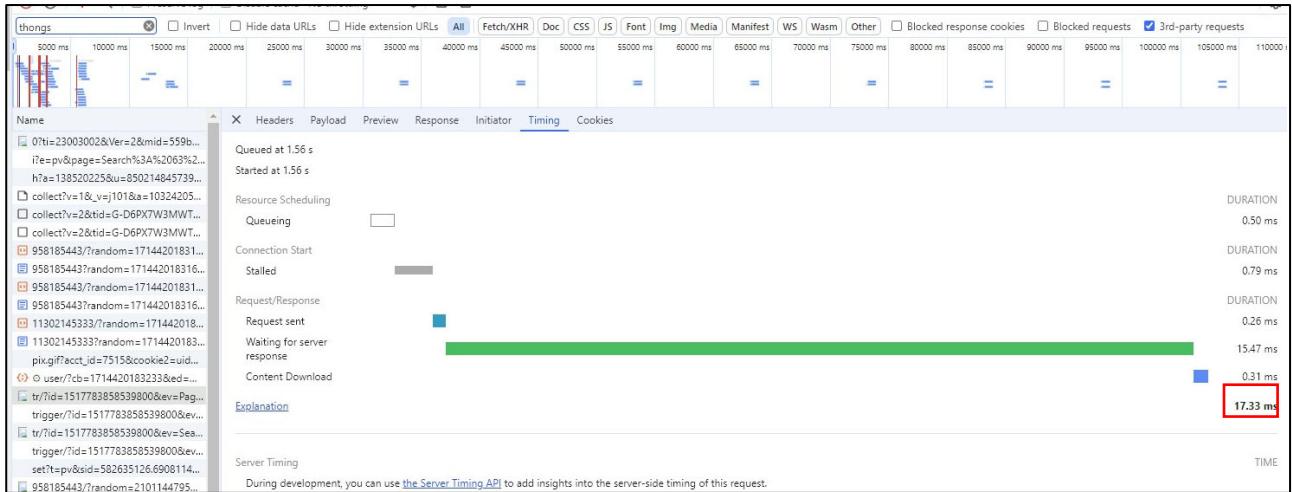


Figure 28

93. In contrast for this same webpage, it took the Website user's browser 0.30  
**thousandths of a second** to establish a connection with the Website<sup>67</sup> and 147.65 **thousandths of a second** to finish downloading results once the user searched for "sexy thong" on Defendant's Website. See Figure 29.

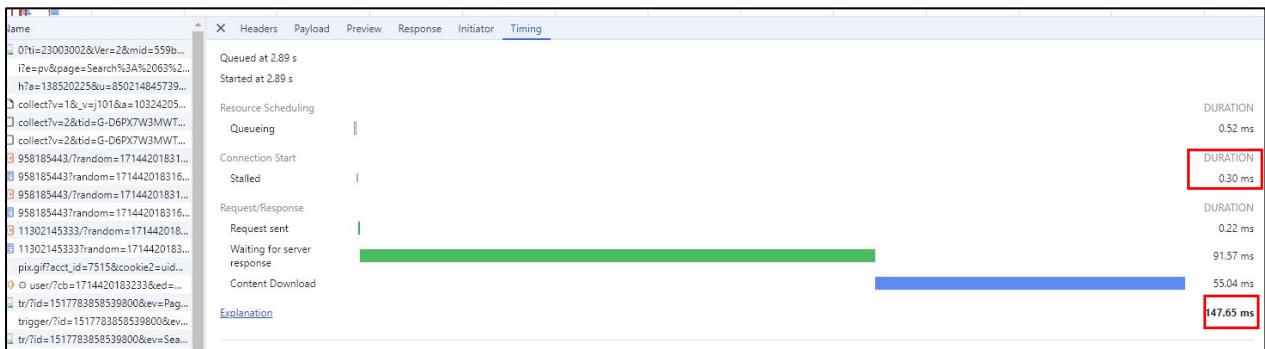


Figure 29

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<sup>67</sup> GOOGLE CHROME DEVELOPERS, TIMING BREAKDOWN PHASES EXPLAINED,  
[https://developer.chrome.com/docs/devtools/network/reference/?utm\\_source=devtools#timing-explanation](https://developer.chrome.com/docs/devtools/network/reference/?utm_source=devtools#timing-explanation).

1       94. This shows that third-party software script, such as Meta, Google, Microsoft, Snap,  
2 and Heap's software script, can intercept the contents of a Website user's communications with  
3 Alo while the communications are in transit to Alo or instantaneously as they are delivered.

4       95. Further, settled precedent has established that duplicating and redirecting  
5 communications in real time are sufficient to state a wiretapping claim. *See In re Meta Pixel*  
6 *Healthcare Litigation*, 956 F.3d 589, 608, 795 (9th Cir. 2020); *Tanner v. Acushnet Co.*, 2023 WL  
7 8152104, at \*5 (C.D. Cal. November 20, 2023).

8       **III. DEFENDANT NEVER RECEIVED USERS' CONSENT TO EMPLOY THE**  
9       **THIRD PARTIES' TRACKING TOOLS TO INTERCEPT USERS'**  
10      **COMMUNICATIONS**

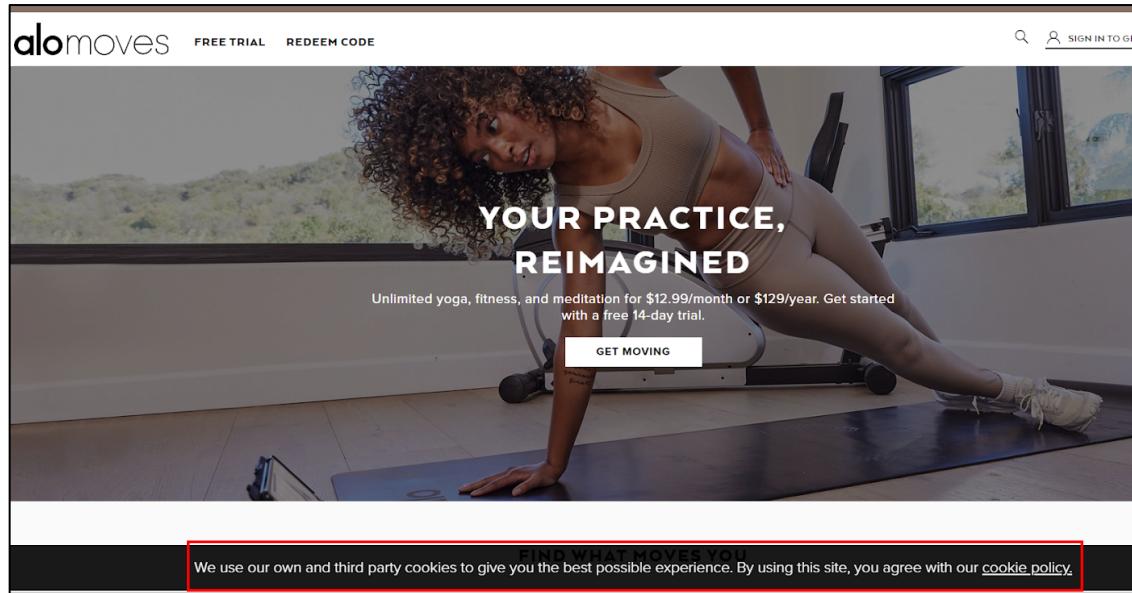
11      96. Defendant allows the Third Parties to intercept users' confidential communications  
12 with Alo without obtaining users' consent.

13      97. At no point during a person's use of either website does Defendant inform users that  
14 Defendant enables third parties to intercept users' communications with Defendant.

15      98. When a user searches for products on aloyoga.com and makes a purchase,  
16 Defendant does not provide users with any type of notice about its practice of allowing third parties  
17 to intercept user communications with Defendant.

18      99. When a user answers Defendant's onboarding survey on alomoves.com, Defendant  
19 also does not provide a notice as to its practices.

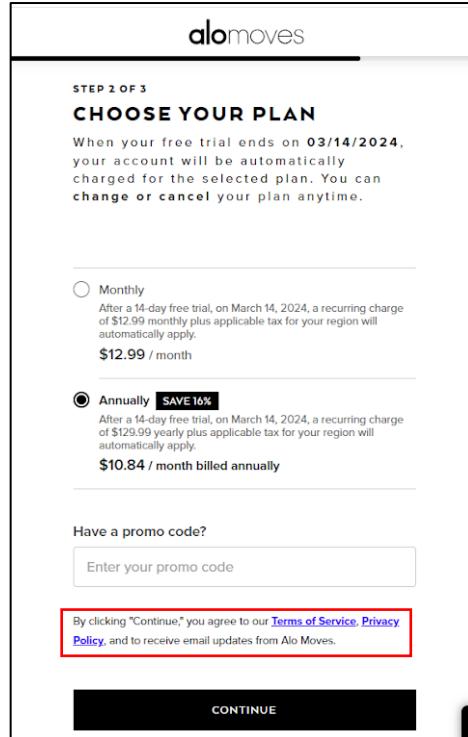
20      100. Defendant might argue it put Website users on notice of their practice of enabling  
21 the Third Parties to intercept communications based on its cookie banner at the bottom of the Alo  
22 Moves website's landing page. *See* Figure 30.



**Figure 30**

101. However, as an initial matter, users are neither on notice of, nor do they consent to  
102 Defendant's "cookie banner." The banner is located at the bottom of the screen, and users are in no  
103 way required to engage with the cookie banner in order to use the Website. Effectively, the  
104 "cookie banner" is non-binding browsewrap. *Price v. Carnival Corp.*, 2024 WL 221437, at \*4-5  
105 (S.D. Cal. Jan. 19, 2024) (citing *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171 (9th Cir. 2014)).

106. Defendant might further argue that it put users on notice of its practices by including  
107 a notice to its Privacy Policy when users sign up for a subscription. See Figure 31.  
108

**Figure 31**

103. However, Defendant’s attempt to put users on notice here fails. This notice does not appear until after users complete the onboarding survey. Therefore, users could not have been given adequate notice of the Privacy Policy at the time they decided to answer Defendant’s onboarding survey.

104. Moreover, even if a user does ever notice the privacy policy, the policy itself misleads consumers into believing the information it collects is primarily for payment processing and customer communications, when that is far from the case. In the section of the policy entitled “INFORMATION WE COLLECT,” Alo broadly says “we collect information that you provide directly to us.”<sup>68</sup> “The types of information you may provide directly to us include, but are not limited to your name, shipping address, billing address, zip or postal code, telephone number, email address, birth date, credit card or payment information, product and communication preferences, family members, demographic information, or any other information that could be

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<sup>68</sup> ALO, PRIVACY POLICY, <https://www.aloyoga.com/pages/privacy-policy>.

1 used to contact you.”<sup>69</sup> However, the collection of user searches fitness survey answers, purchases  
 2 and page views is much more sensitive.

3       105. Worse yet, the section of the Privacy Policy entitled “HOW WE SHARE YOUR  
 4 INFORMATION” never discloses Alo shares personal information for advertising or analytics  
 5 either.<sup>70</sup>

6       106. Thus, Defendant never properly obtains consent from its users to disclose their  
 7 communications from either of its Websites.

### **CLASS ACTION ALLEGATIONS**

9       107. Plaintiff Christine Garcia seeks to represent a class of all California residents who  
 10 entered information into Defendant’s Websites, alomoves.com or aloyoga.com, by conducting  
 11 searches using the search bar on aloyoga.com, or answered Defendant’s onboarding survey on  
 12 alomoves.com while in California (the “Class”).

13       108. Plaintiff reserves the right to modify the class definition or add sub-classes as  
 14 necessary prior to filing a motion for class certification.

15       109. The “Class Period” is the time period beginning on the date established by the  
 16 Court’s determination of any applicable statute of limitations, after considering of any tolling,  
 17 concealment, and accrual issues, and ending on the date of entry of judgment.

18       110. Excluded from the Class are Alo; any affiliate, parent, or subsidiary of Alo; any  
 19 entity in which Alo has a controlling interest; any officer director, or employee of Alo; any  
 20 successor or assign of Alo; anyone employed by counsel in this action; any judge to whom this  
 21 case is assigned, his or her spouse and immediate family members; and members of the judge’s  
 22 staff.

23       111. **Numerosity.** Members of the Class are so numerous that joinder of all members  
 24 would be unfeasible and not practicable. The exact number of Class Members is unknown to  
 25 Plaintiff at this time; however, it is estimated that there are hundreds of thousands of individuals in

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26  
 27       <sup>69</sup> *Id.*  
 28       <sup>70</sup> *Id.*

1 the Class. Class Members can be readily identified from Alo's records and non-party records, such  
2 as those of Meta, Google, Microsoft, and Heap.

3       112. **Typicality.** Plaintiff's claims are typical of the claims of the Class because  
4 Plaintiff, like all other members, visited Alo's Website and had her confidential electronic  
5 communications intercepted and disclosed to one of the Third Parties.

6       113. **Adequacy.** Plaintiff is fully prepared to take all necessary steps to represent fairly  
7 and adequately the interests of the Class. Plaintiff's interests are coincident with, and not  
8 antagonistic to, those of the members of the Class. Plaintiff is represented by attorneys with  
9 experience in the prosecution of class action litigation generally and in the emerging field of digital  
10 privacy litigation specifically. Plaintiff's attorneys are committed to vigorously prosecuting this  
11 action on behalf of the members of the Class.

12       114. **Common Questions of Law and Fact Predominate.** Questions of law and fact  
13 common to the members of the Class predominate over questions that may affect only individual  
14 members of the Class because Defendant has acted on grounds generally applicable to the Class.  
15 Such generally applicable conduct is inherent in Defendant's wrongful conduct. Questions of law  
16 and fact common to the Class include, but are not limited to, the following: whether Defendant  
17 violated CIPA § 631 and whether Plaintiff and the proposed Class Members are entitled to  
18 damages, reasonable attorneys' fees, pre-judgment interest and costs of this suit.

19       115. **Superiority.** Class action treatment is a superior method for the fair and efficient  
20 adjudication of the controversy. Such treatment will permit a large number of similarly situated  
21 persons to prosecute their common claims in a single forum simultaneously, efficiently, and  
22 without the unnecessary duplication of evidence, effort, or expense that numerous individual  
23 actions would engender. The benefits of proceeding through the class mechanism, including  
24 providing injured persons or entities a method for obtaining redress on claims that could not  
25 practicably be pursued individually, substantially outweigh potential difficulties in the management  
26 of this class action. Plaintiff knows of no special difficulty to be encountered in litigating this  
27 action that would preclude its maintenance as a class action.

**CLAIMS FOR RELIEF****COUNT I****Violation Of The California Invasion Of Privacy Act,  
Cal. Penal Code § 631**

116. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth  
 herein.

117. Plaintiff brings this claim against Defendant individually and on behalf of the Class.

118. CIPA § 631(a) imposes liability for “distinct and mutually independent patterns of  
 conduct.” *Tavernetti v. Superior Ct.*, 22 Cal. 3d 187, 192-93 (1978). Thus, to establish liability  
 under CIPA § 631(a), a plaintiff need only establish that the defendant, “by means of any machine,  
 instrument, contrivance, or in any other manner,” does any of the following:

119. Intentionally taps, or makes any unauthorized connection,  
 whether physically, electrically, acoustically, inductively or  
 otherwise, with any telegraph or telephone wire, line, cable, or  
 instrument, including the wire, line, cable, or instrument of any  
 internal telephonic communication system,

14           *Or*

15           Willfully and without the consent of all parties to the  
 communication, or in any unauthorized manner, reads or  
 attempts to read or learn the contents or meaning of any message,  
 report, or communication while the same is in transit or passing  
 over any wire, line or cable or is being sent from or received at  
 any place within this state,

18           *Or*

19           Uses, or attempts to use, in any manner, or for any purpose, or to  
 communicate in any way, any information so obtained,

21           *Or*

22           Aids, agrees with, employs, or conspires with any person or  
 persons to unlawfully do, or permit, or cause to be done any of  
 the acts or things mentioned above in this section.

24           119. CIPA § 631(a) is not limited to phone lines, but also applies to “new technologies”  
 such as computers, the Internet, and email. *See Matera v. Google Inc.*, 2016 WL 8200619, at \*21  
 (N.D. Cal. Aug. 12, 2016) (CIPA applies to “new technologies” and must be construed broadly to  
 effectuate its remedial purpose of protecting privacy); *see also Javier v. Assurance IQ, LLC*, 2022

1 WL 1744107, at \*1 (9th Cir. May 31, 2022) (“Though written in terms of wiretapping, Section  
2 631(a) applies to Internet communications.”).

3 120. The Third Parties’ Tracking Tools are a “machine, instrument, contrivance, or ...  
4 other manner” used to engage in the prohibited conduct at issue here.

5 121. The Third Parties, Meta, Google, Microsoft, Snap, and Heap are “separate legal  
6 entit[ies] that offer[] [a] ‘software-as-a-service’ and not merely a passive device.” *Saleh v. Nike,*  
7 *Inc.*, 562 F. Supp. 3d 503, 520 (C.D. Cal. 2021). Further, the Third Parties had the capability to  
8 use the wiretapped information for their own purposes. Accordingly, Meta, Google, Microsoft,  
9 Snap, and Heap were third parties to any communication between Plaintiff and Class Members, on  
10 the one hand, and Defendant, on the other. *Id.* at 521; *see also Javier v. Assurance IQ, LLC*, 649 F.  
11 Supp. 3d 891, 900 (N.D. Cal. 2023).

12 122. At all relevant times, the Third Parties willfully and without the consent of all  
13 parties to the communication, or in any unauthorized manner, read, attempted to read, and/or  
14 learned the contents or meaning of electronic communications of Plaintiff and Class Members, on  
15 the one hand, and Defendant, on the other, while the electronic communications were in transit or  
16 were being sent from or received at any place within California.

17 123. At all relevant times, the Third Parties used or attempted to use the communications  
18 intercepted by their Tracking Tools to promote and improve their advertising platforms.

19 124. At all relevant times, Defendant aided, agreed with, employed, permitted, or  
20 otherwise enabled the Third Parties to wiretap Plaintiff and Class Members using the Tracking  
21 Tools and to accomplish the wrongful conduct at issue here.

22 125. Plaintiff and Class Members did not provide their prior consent to the Third Parties’  
23 intentional access, interception, reading, learning, recording, collection, and usage of Plaintiff’s  
24 and Class Members’ electronic communications. Nor did Plaintiff and Class Members provide  
25 their prior consent to Defendant aiding, agreeing with, employing, permitting, or otherwise  
26 enabling the Third Parties’ conduct.

126. The wiretapping of Plaintiff and Class Members occurred in California, where Plaintiff and Class Members accessed the Alo Websites and where the Third Parties—as enabled by Defendant—routed Plaintiff and Class Members’ electronic communications to their servers.

127. Pursuant to Cal. Penal Code § 637.2, Plaintiff and Class Members have been injured by Defendants' violations of CIPA § 631(a), and each seeks statutory damages of \$5,000 for each of Defendant's violations of CIPA § 631(a).

**COUNT II**  
**Violation Of The California Invasion Of Privacy Act,  
Cal. Penal Code § 632**

128. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

129. Plaintiff brings this claim against Defendant individually and on behalf of the Class.

130. CIPA § 632(a) prohibits entities from:

intentionally and without the consent of all parties to a confidential communication, uses an electronic amplifying or recording device to eavesdrop upon or record the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio.

131. The Third Parties' Tracking Tools are "electronic amplifying or recording device[s]."

132. At all relevant times, the communications between Plaintiff and Class Members on one hand, and Alo on the other, were confidential.

133. At all relevant times, Meta, Google, Microsoft, Snap, and Heap intentionally used the Tracking Tools to eavesdrop upon and record such confidential communications.

134. When communicating with Alo, Plaintiff and Class Members had an objectively reasonable expectation of privacy. Plaintiff and Class Members did not reasonably expect anyone other than Alo to be a party to the communications, and did not expect that other, third-party entities, Meta, Google, Microsoft, Snap, and Heap, would intentionally use an electronic amplifying or recording device to eavesdrop upon and record their confidential communications.

135. Plaintiff and Class Members did not consent to any of the Third Parties' actions. Nor have Plaintiff and Class Members consented to the Third Parties' intentional use of an electronic amplifying or record device to eavesdrop upon and record the confidential communications of Plaintiff and Class Members.

136. Pursuant to Cal. Penal Code § 637.2, Plaintiff and Class Members have been injured by Defendant's violations of CIPA § 632(a), and each seeks statutory damages of \$5,000 for each of Defendant's violations of CIPA § 632(a).

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seek judgment against Defendant, as follows:

- (a) For an order certifying the putative Class, naming Plaintiff as the representative of the putative Class, and naming Plaintiff's attorneys as Class Counsel to represent the putative Class Members;
  - (b) For an order declaring that the Defendant's conduct violates the statutes referenced herein;
  - (c) For an order finding in favor of Plaintiff and the putative Class on all counts asserted herein;
  - (d) For statutory damages in amounts to be determined by the Court and/or jury;
  - (e) For prejudgment interest on all amounts awarded;
  - (f) For injunctive relief as pleaded or as the Court may deem proper; and
  - (g) For an order awarding Plaintiff and the putative Class their reasonable attorneys' fees and expenses and costs of suit.

## **DEMAND FOR JURY TRIAL**

Plaintiff, on behalf of themselves and the proposed Class, demand a trial by jury for all of the claims asserted in this Complaint so triable.

1 Dated: June 28, 2024

Respectfully submitted,

2 **BURSOR & FISHER, P.A.**

3 By: /s/ Stefan Bogdanovich  
Stefan Bogdanovich

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